

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54838 of 2021

Arising Out of PS. Case No.-2 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Aurangabad

=====

Chandan Kumar Shah @ Chandan Kumar Sah S/O Yukti Sah R/O Village-
Sonaghatta, P.S- Koilbar, District- Bhojpur (Bihar).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s :	Mr. Pramendra Kumar Singh, Advocate
For the Opposite Party/s :	Mr. Kumar Uday Pratap, APP
For the NCB	Mr. Praveen Kumar Sinha, Senior Panel Counsel
	Mr. Rakesh Kumar Sinha, CGC

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

6 06-09-2022 Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

2. Heard Mr. Pramendra Kumar Singh, learned counsel for the petitioner, Mr. Praveen Kumar Sinha, Senior Panel Counsel, appearing on behalf of Union of India and learned APP for the State.

3. The petitioner seeks regular bail, who is in custody in connection with N.C.B. Case No. 21 of 2021 (G.R. No. 05 of 2021) registered for the offences punishable under Sections 8(c), 20(ii)(c), 25 and 29 of the N.D.P.S. Act.

4. The prosecution case is based on the written report of Junior Intelligence Officer, NCB, Patna Zonal Unit alleging



therein that on a secret information that one Truck (Tata 407) bearing registration no. BR01GA 9684 carrying a huge quantity of Ganja and escorted by Honda City Car bearing registration no. WB06C 9552 coming from Odisha via Daltonganj, Aurangabad to Ara. On the aforesaid information, a team of NCB was constituted and intercepted both the aforesaid vehicles. The raiding party found two persons including Mukesh Kumar and Chandan Kumar (petitioner), who was driving Honda City car. Both the vehicles were taken to the police station, and on search 60 packets, each containing 5 Kg of Ganja, total 300 Kg Ganja, were recovered. Two persons, who were sitting in the Tata 407 were also apprehended and they disclosed their name as Gorakh Kumar and Sanjay Kumar.

5. Learned counsel appearing on behalf of the petitioner submits that the petitioner is said to be the driver of the Honda City Car. At the time of interception, he was on the driving seat of the said car. He further submits that no bank transaction with the alleged traffickers has been attributed against the petitioner. No money has been transferred from the account of the petitioner to the account of accused Papun Bira, Harbansha Lima and Dilip Lima, which shows the false implication of the petitioner in the present crime. He lastly



submits that the petitioner is in custody since 08.02.2021, having fair antecedent.

6. On the other hand, learned counsel appearing on behalf of NCB filed a counter affidavit and vehemently opposes the bail application. He submits that the statement of the petitioner was recorded under Section 67 of the NDPS Act and in his voluntary statement he confessed his conscious involvement in trafficking all the seized Ganja. He stated that he along with his friend Mukesh Kumar went to Daltonganj with the vehicle of Mukesh Kumar to escort the Tata 407 Truck loaded with the Ganja, as per direction of the Mukesh Kumar for lure of money.

7. On the other hand, learned APP for the State also opposes the bail application and submits that a huge consignment of Ganja in commercial quantity was recovered from the possession of the petitioner.

8. Regard being had to the materials available on record, as also the settled principle of law that while considering the bail application under the NDPS Act not only the limitations imposed under Section 439 of the Cr.P.C. is to be kept in mind, but also the restrictions placed under Section 37(i)(b) of the NDPS Act to be factored in. Section 37(i)(b) of the NDPS Act



states “(i) the Public Prosecutor ought to be given an opportunity to oppose the application made by an applicant for release; (ii) If such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that a person/accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused persons is unlikely to commit offence while on bail.”

9. The expression reasonable grounds under Section 37(i)(b) of the Act would mean credible, plausible and grounds for the Court to believe that the accused person is not carried of the alleged offence.

10. The Apex Court in the case of **State of Kerala Vs. Rajesh**, since reported in **(2020) 12 SCC 122**, clarified that the entire exercise that a Court is expected to undertake under the Act under Section 37 of the NDPS Act is to see the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and that he is unlikely to commit an offence under the Act, while on bail. This Court finds that there is ample material on record suggesting the involvement of the petitioner in escorting the Tata 407, from which, huge consignment of Ganja was recovered and further the call details report of mobile of all co-accused including the



petitioner showed that they were in touch with each other, showing the involvement of the accused persons in trafficking of Ganja and its recovery, this Court is not persuaded to enlarge the petitioner on bail.

11. It is expected that the learned trial court will take all necessary measures to expedite the trial and conclude the same as early as possible.

(Harish Kumar, J)

uday/-

U		T	
---	--	---	--

