

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56651 of 2021

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

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Mukesh Kumar, S/O Vinod Sah @ Vinod Prasad, Resident of Birampur, P.S.-
Koilwar, District- Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Union of India, through N.C.B. Bihar, Patna Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Advocate Mr. Anil Kumar Singh, Advocate
For the Opposite Party/s	:	Mr. Pranav Kumar, APP
For the Union of India	:	Mr. Praveen Kumar Sinha, Sr. Panel Counsel

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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. Ranjeet Kumar, 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 registered for the offences punishable under Sections 8(C), 20(b)(c), 25 and 26 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 (petitioner) and Chandan Kumar, 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 has no concern with the Mini Truck, in question, from which alleged recovery is made. The petitioner was on Honda City car along with co-accused Chandan Kumar for a private work and the petitioner has been roped in this case on a false information given to NCB. He further submits that neither any incriminating article has been recovered from the person or possession of the petitioner nor



from the Honda City Car. Moreover, any confessional statement recorded by NCB under Section 67 of the NDPS Act is inadmissible in the eye of law. He further submits that there is no Bank transaction with the alleged traffickers, inasmuch as one of the account in the name of the petitioner in the IndusInd Bank found to be dormant and one another account, there is no substantial transfer, which suggests even a suspicion against the petitioner in the involvement of the crime. He further submits that the three mobile phones, which are said to have been recovered from the Honda City Car, belongs to one Chandan Kumar and Pawan Kumar and so far as third mobile is concerned, the call detail report is not made available during the course of investigation. He next submits that as a matter of fact this petitioner is a Sharafa shopkeeper and he along with his family members are running a gold shop at Ara district and the said Harbansha Lima and Dilip Lima have also running a gold shop, due to that reason the petitioner deposited the amount for purchasing goods. He lastly submits that the petitioner is in custody since 19.02.2021 and save and except one criminal antecedent that too under Arms Act he has not been involved in any other case.

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 petitioner on being arrested, given his voluntary statement under Section 67 of the NDPS Act and disclosed that he and co-accused Vinay Kumar were the owner of the seized Ganja. During the course of investigation, materials have come suggesting that this petitioner sent money through his brother Rupesh Kumar's account no. 100077895850 to the supplier/suspect of seized Ganja, Papun Bira and Dilip Lima in account no. 919010028072430 of Axis Bank. He also submits that from the call details report of mobile no. 7209947982 and 8658963127, which were recovered from the possession of the petitioner shows multiple conversation with Gorakh Kumar, (the driver of the seized Tata 407 Truck), Papun Bira (supplier of seized Ganja) and other receiver Vinay Kumar, which facts clearly shows the active involvement of the petitioner in the present crime. He further submits that the seized Honda City car, in which the petitioner and co-accused Chandan Kumar were apprehended is registered in the name of Om Prakash Yadav and the said Om Prakash Yadav categorically stated that he was working as a labour in the house of the petitioner. The said car was purchased in the name of Om Prakash Yadav, however, the



same was always used by Mukesh Kumar for his personal use. He lastly submits that there are no procedural infirmities in search and seizure, apart from the fact that the seized sample of Ganja was sent to CRCL, Kolkata and after chemical examination the sample under reference answers positive test for Ganja.

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 further finds that there is ample material on record suggesting the involvement of the petitioner in making money transaction in favour of the suspected trafficker of Ganja 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)

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