

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56380 of 2021

Arising Out of PS. Case No.-491 Year-2021 Thana- HAJIPUR SADAR District- Vaishali

VIKASH KUMAR SON OF LATE RAM DULAR RAY R/O OF VILLAGE-
RAMPUR, P.S.- RAGHOPUR, DISTRICT- VAISHALI

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bela Singh, Adv.

For the Opposite Party/s : Mr. Dr. Indivar Kumari, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

5 25-07-2022 Heard learned counsel for the petitioner and the
learned A.P.P. for the State.

The petitioner seeks bail in a case registered for
the offence under Sections 20, 22, 23, 24, 27 and 29 of the
NDPS Act.

According to the prosecution, altogether, 45 Kg. of
Ganja is said to have been recovered from the possession of
four accused including the petitioner. The petitioner is
stated to be apprehended having possession of 10 Kgs. of
Ganja.

Learned counsel for the petitioner submits that the
petitioner, who is of clean antecedent, is innocent and has
not committed any offence. In fact, according to the F.I.R., 10



Kgs. of Ganja is said to have been recovered from the possession of the petitioner. He further submits that nothing incriminating has been recovered from the conscious possession of the petitioner and he has no concern with the alleged recovery of 10 Kgs. of Ganja. He also submits that the petitioner is not involved in illegal dealing of Ganja. He further submits that the petitioner, who is of no fault, is rotting in judicial custody since 21.05.2020.

Learned A.P.P. for the State has, vehemently, opposed the prayer for bail of this petitioner and submits that altogether a huge quantity to the extent of 45 Kgs. of Ganja has been recovered from the possession of the petitioner and others which is more than the commercial quantity. He further submits that though out of 45 Kgs. of Ganja, 10 Kgs. of Ganja is stated to be seized from the possession of the petitioner but the totality of the recovery in this case is of 45 kgs. of Ganja, therefore, recovered quantity is more than the commercial quantity and the petitioner seems to be engaged in dealing with the contraband substance like Ganja. Hence, the petitioner does not deserve to be enlarged on bail.

Result of examination of Forensic Science



Laboratory is as under;

“The greenish brown coloured dried and pressed vegetative substance along with seeds kept in four plastic dibba marked ‘A’ ‘B’ ‘C’ and ‘D’ as described above was found to be ‘GANJA’.

Ganja is the flowering or fruiting tops of cannabis plant, whose chief psychoactive ingredient is Tetra hydro cannabinol (THC).”

Since the quantum of recovery of Ganja, which is to the extent of 45 Kgs. in its entirety in this case falls within the purview of commercial quantity, which is defined as 20 Kgs., this Court intends to refer Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which clearly depicts that the grant of bail in N.D.P.S. cases, where the recovery of commercial quantity of narcotic is alleged, is circumscribed. Section 37 says that for granting bail, the Court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences for which he has been charged, and further he is not likely to commit any offence while on bail.

This issue has also been considered by the Hon’ble Supreme Court in the case of ***State of Kerala and Ors. Vs. Rajesh & Ors.*** reported in ***2020 (12) SCC 122.***

In view of the aforesaid reference and the facts of



the case, this court is of the view that the recovery of more than commercial quantity of Ganja from the possession of the petitioner and his associates, confirming the same by the F.S.L. report, would not justify that the petitioner was not involved in commission of such offence and also there is no material available to substantiate that the petitioner would not commit such offence in the event of release. Therefore, considering the quantum of recovery of Ganja as well as the mandate of Section 37, this Court is not inclined to enlarge the petitioner on bail at this stage. Accordingly, the prayer for grant of bail to the petitioner is rejected.

However, learned trial court is directed to expedite the trial.

(Rajesh Kumar Verma, J)

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