

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55359 of 2021

Arising Out of PS. Case No.-326 Year-2020 Thana- DHAKA District- East Champaran

Biswanath Sahani @ Viswanath Singh Son of Baleshwar Sahani Resident of
Village - Dewapur, P.S. - Patahi, District - East Champaran.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Prateek Tandon

For the Opposite Party/s : Mr. A.G.

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

4 19-05-2022 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State in Virtual Court
proceeding.

Let the defects, as pointed out by the office, be
removed within four weeks of start of normal functioning of the
physical court.

Petitioner seeks bail in connection with N.D.P.S. Case
No. 32 of 2020 arising out of Dhaka (Pachpakari) P.S. Case No.
326 of 2020 registered for the offences punishable under
Sections 412, 420 of the Indian Penal Code and Sections 25(1-
b) a, 26, 35 of the Arms Act and Sections 8 and 20 of the
N.D.P.S. Act.

Recovery is of total 500 grams of Charas, one loaded
country made pistol and motorcycle from the possession of the



petitioner.

Learned counsel for the petitioner submits that petitioner is innocent and has committed no offence and he has falsely been implicated in the present case. He further submits that it appears from the F.I.R. as well as seizure list that 500 grams of Charas, one loaded country made pistol and motorcycle has been recovered from the conscious possession of the petitioner. He further submits that the police after investigation submitted the charge sheet against the petitioner and the petitioner is in custody since 23.08.2020.

As per the notification issued under the NDPS Act, 1985, the small quantity of Charas is 100 gms. and commercial quantity of Charas has been defined as 1000 gms. and the recovery in the present case is of 500 grams of Charas which is more than the small quantity.

The grant of bail in NDPS cases where the recovery of commercial quantity of narcotic is alleged is circumscribed under Narcotic Drugs and Psychotropic Substances Act, 1985, Section 37 which says that before grant of bail, the Court must have reason to believe that petitioner has not committed the offence and in the event of release he would not commit similar offence.



The issue was considered by the Hon'ble Supreme Court in the case of *State of Kerala and Ors. Vs. Rajesh and Ors.*, reported in *2020(12) SCC 122*.

The F.S.L. report dated 27.04.2022 also confirms that the substance is Charas. The recovery of more than the small quantity of Charas from the possession of the petitioner would not justify that the petitioner had no knowledge of narcotic nor there is any material to substantiate that the petitioner would not commit such offence in the event of release.

Considering the aforesaid facts and circumstances, I am not inclined to grant the privilege of bail to the petitioner in connection with N.D.P.S. Case No. 32 of 2020 arising out of Dhaka (Pachpakari) P.S. Case No. 326 of 2020 pending in the court of learned 1st Additional District and Sessions Judge-cum-Special Judge, N.D.P.S., East Champaran, Motihari. Accordingly, the same stands rejected.

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

(Rajesh Kumar Verma, J)

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