

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56534 of 2021

Arising Out of PS. Case No.-43 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Gaya

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1. BIRESH S/o Haram Singh R/o Village- Asdharmai, P.S.- Usawa, District- Badayu (U.P.)
 2. GOBIND S/o Surendra R/o Village- Nayari, P.S.- Usava, District- Badayu (U.P.)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sudhir Kumar Sinha, Advocate.

For the Opposite Party/s : Mr. Brajendra Nath Pandey, APP.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

7 17-10-2022 Learned counsel for the petitioners is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

Heard Mr. Sudhir Kumar Sinha, learned counsel for the petitioner and learned APP for the State.

The petitioners seek regular bail, who are in custody in connection with N.D.P.S. Case No. 43 of 2021, registered for the offences punishable under Sections 8 and 20(b)(ii)(C) of the the Narcotic Drugs and Psychotropic Substances Act, 1985.

On a confidential information with regard to



trafficking of contraband, vehicle checking was conducted and a truck bearing Registration No. MH-01-CR-5516 was intercepted. On search, in presence of the witnesses total 180 Kg of Cannabis (Ganja) was recovered and both the petitioners were said to be driver and cleaner, were apprehended on the spot.

It is submitted by the learned counsel appearing on behalf of the petitioners that the petitioners being the driver and *Khalaasi* of the said truck, had no knowledge about the Cannabis, kept concealed in the truck, which runs for transportation of the goods on the dictate of transporter/owner. He further submits that the goods were kept in a sack and as such they neither suspected nor they asked the transporter to show the goods, which was kept inside the sack. He next submitted that there is no compliance of Section 57 of the N.D.P.S., Act and the petitioners have neither any concern with the vehicle in question nor with the alleged incriminating material. He also submits that the petitioners having fair antecedent, are in custody since 19.04.2021 and the investigation of the crime is already complete, apart from that all the witnesses are police officials and as such there is no likelihood of tempering of evidence and intimidating the



witnesses.

On the other hand learned APP for the State vehemently opposes the bail application and submitted that the excise officials on a secret information intercepted a truck and on search huge quantity of 180 kg Cannabis (Ganja) was recovered. He further submits that the petitioners have disclosed in the FIR that they have received the said truck from Ramgarh (Jharkhand) to deliver it to one Hakim Singh at Agra and there is no infirmities in the search and seizure. In support of the aforesaid submissions, a counter affidavit has been filed on behalf of the Inspector of Prohibition, Dobhi Check Post, Gaya, which is on record.

It is well settled that among other circumstances the factors, inter alia, are to be born-in-mind, while considering the application for bail are, whether there is any prima facie or reasonable ground to be believed that the accused had committed the offense, the nature of gravity of the accusation and the severity of the punishment in the event of conviction, apart from the various factors there are other limitation imposed under Section 37(1)(B) of the N.D.P.S. Act, which obliged the court that before releasing the accused persons on bail, the Public Prosecutor must be given an opportunity to oppose the



application for such release and where the Public prosecutor opposes the application, the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

The Scheme of 37 of the NDPS Act reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the Cr.P.C., but is also subject to the limitation placed by Section 37 of the NDPS Act, which commences with non-obstante clause.

Regard being had to the submissions made on behalf of the parties and considering the materials available on record, especially the fact that the petitioners were apprehended in possession of huge quantity of Ganja in commercial quantity, apart from the fact that they have categorically disclosed that they were carrying the consignment from Ramgarh (Jharkhand) and the same was to be handed over to one Hakim Singh at Agra (U.P), this court is not persuaded to enlarge the petitioners on bail.

Accordingly, the prayer of the petitioners stands rejected.

It is expected that the learned Trial Court, will take all



necessary endeavor to expedite and conclude the trial as early as possible.

(Harish Kumar, J)

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