

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57203 of 2021

Arising Out of PS. Case No.-10 Year-2020 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Sheikh Samiullah, Son of Sheikh Najibullah, Resident of Mistridaphel,
Village & P.S- Birmitrapur, Dist- Sundergarh, State Orissa

... .. Petitioner/s

Versus

The Union of India through NCB

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Majid Mahboob Khan, Advocate
		Mr. Rashid Zafar, Advocate
For the Opposite Party/s :		Mr. K.N. Singh (Addl.S.G)
		Mr. Ratnesh Kumar, CGC

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

9 10-10-2022 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. Majid Mahboob Khan, learned CGC on behalf of Union of India as well as learned counsel for the State.

3. The petitioner seeks bail, who is in custody in connection with Special (NDPS) Case No. 141 of 2020, arising out of Crime No. NCB/PZU/V/10/2020, registered for the offences under Sections 8(c) read with Sections 20(b)(ii)(c), 25 and 29 of the NDPS Act.

4. The prosecution case is based on a written report filed by Intelligence Officer, Narcotic Control Bureau



(hereinafter referred to as 'NCB') alleging therein that on 16.09.2020 on a secret information that a truck bearing registration no. UP 53CT 0913 loaded with huge quantity of Ganja was coming from Sambalpur Orissa to Zero Mile, Patna, was intercepted by a team of NCB and two persons, said to be the driver and co-driver, were apprehended at the spot. On enquiry, the persons, who were occupying the said truck admitted that around 607 Kg of Ganja is being carried in the said truck and the driver Vicky Sharma disclosed the name of co-accused Raj Ghosh, as supplier of the Ganja and also disclosed about his staying at Mamta Hotel, Bakhtiyarpur. On the said information, the team of NCB raided Mamta Hotel and apprehended co-accused Raj Ghosh and Sheikh Sammiullah (petitioner). The apprehended Raj Ghosh disclosed the name of Basishtha Kumar and one Surendra Kumar Ray @ Surendra Kumar, as the consignee of the seized Ganja. It is also alleged that all the apprehended persons were taken to Transport Nagar police station where in their presence, search was made and 607 Kg of Ganja in 24 plastic sacks were recovered.

5. Learned counsel appearing on behalf of the petitioner submits that from the materials available on record, it is evident that the petitioner is neither the truck owner, driver,



Khalasi nor the supplier nor the receiver of the contraband Ganja nor he has any association with co-accused Raj Ghosh. Even from the statement of the co-accused Raj Ghosh recorded under Section 67 of the NDPS Act, the only material against the petitioner has come that co-accused Raj Ghosh had hired his Taxi for the purposes of coming to Patna, as he used to run the vehicle on rent. It has also come that the petitioner has no knowledge about the complicity of Raj Ghosh or any other suspects involving in illegal trafficking of contraband Ganja. He further submits that even during the course of investigation, from the call detail records (CDR) it does not transpire that this petitioner was in touch with any other accused persons, save and except Raj Ghosh, who had hired the vehicle of the petitioner through travel agency. He lastly submits that the petitioner is in custody since 18.09.2020, having fair antecedent and he is ready to abide by all the terms and conditions, as would be imposed by this Court.

6. On the other hand, learned CGC appearing on behalf of Union of India vehemently opposes the bail application and submits that apart from the statement recorded under Section 67 of the NDPS Act admitting the involvement of the petitioner in trafficking the huge quantity of Ganja along



with co-accused Raj Ghosh, there are other materials showing the involvement of the petitioner. He further submits that the petitioner was also apprehended along with co-accused Raj Ghosh at Mamta Hotel, Bakhtiyarpur and he also remained in touch with co-accused Raj Ghosh.

7. Learned CGC also relied upon the judgment rendered by the Hon'ble Supreme Court in the case of **State of Kerala Etc. Vs. Rajesh Etc.** (Criminal Appeal No(s). 154-157 of 2020, arising out of SLP (Crl.) No(s) 7309-7312 of 2019). Further reliance has also been made on a judgment rendered in the case of **Narcotic Control Bureau Vs. Mohit Agrawal** (Criminal Appeal Nos. 1001-1002 of 2022, arising out of Petitions for Special Leave to Appeal (Crl.) No. 6128-29 of 2021).

8. It would be apt and proper to reiterate the observations and the mandate given by the Hon'ble Supreme Court in the aforesaid cases that to check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions in Section 37, namely; (I) there are reasonable grounds for believing that the accused is not guilty of such



offence; and (ii) that he is not likely to commit any offences while on bail are satisfied.

09. 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.

10. The expression reasonable grounds means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

11. So far the admissibility with regard to the statement recorded under Section 67 of the NDPS Act is concerned, the Hon'ble Supreme Court in the case of **Mohit Agrawal** (Supra) while considering the aforesaid three judges Bench judgment of Tofan Singh Vs. State of Tamil Nadu has clearly observed that confessional statement recorded under Section 67 of the NDPS Act could not have relied by the NCB, as the same is held to be inadmissible in the trial of an offence



under the NDPS Act.

12. Having regard to the submissions made on behalf of the parties and considering the materials available on record, which only suggests that the vehicle of the petitioner was hired by co-accused Raj Ghosh through a travel agency and prior to that there had never been any association of the petitioner for assisting in trafficking of Ganja and other narcotic substance nor the petitioner had any prior knowledge with regard to involvement of the co-accused persons in trafficking of contraband like substance, apart from the fact that neither there is any material suggesting the petitioner was in touch with any other persons on mobile or any money transaction took place. Further, the petitioner, having fair antecedent, is in custody for more than two years and there is no likelihood of conclusion of trial in near future, this Court deems it apt and proper to enlarge the petitioner on bail, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.50,000/- (Rupees fifty thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-XVIII, Patna in connection with Special (NDPS) Case No. 141 of 2020, arising out of Crime No. NCB/PZU/V/10/2020, subject to the condition that one of the bailors will be the local residents with



further conditions which are as follows:-

(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain physically present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(Harish Kumar, J)

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