

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58615 of 2021

Arising Out of PS. Case No.-187 Year-2021 Thana- JOGBANI District- Araria

1. Jyotish Kumar Khawas @JYOTISH Khawas, Son of Bharat Kumar Khawas.
2. Madan Risideo Son of Jhabaru @ Jhabaru Rishidev.
Both are Resident of Village - Tajki Sinwari, Ward no.1, P.S.- Morang,
Distt.- Moranga (Nepal).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anil Prasad Singh, Adv.

For the Opposite Party/s : Mr.Md. Mushtaque Alam, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 10-05-2022 Heard counsel for the parties.

The petitioners are in judicial custody in connection with Special Case No.32 of 2021 arising out of Jogbani P.S. Case No.187 of 2021 under Sections 20,22,23 and 24 of the N.D.P.S. Act and presently pending before the Court of learned Sessions Judge, Araria.

The informant, an A.S.I. with the 56th Bahini S.S.B. Jogbani filed a complaint before the SHO, Jogbani police station on 21.08.2021 stating therein that a motorcycle with Nepal registration number was coming from Nepal. When they were signaled to stop the motorcycle; they took U-turn and started rushing back to Nepal. They were intercepted and upon search, amongst the other, 1.8 Kg. Ganja was recovered in a 'dholak'



from their possession. A seizure list was prepared and it was under these circumstances that the petitioners came into judicial custody.

In this case case, diary was called for on 12.04.2022 which has been received and perused by the learned A.P.P.

Learned counsel for the petitioners submit that the entire prosecution story has been created by the informant to implicate him. He submits that the informant failed to even comply with the mandatory provisions that are required in the case under N.D.P.S. Act. He submits that although the case shows that 1.8 Kg. '*Ganja*' was recovered/seized amongst other the petitioners herein; a bare perusal of the seizure list that is part of the F.I.R. would show that the signature of the petitioners are not there. Thus, it can be safely assumed that they were not carrying the said '*Ganja*' and has simply been implicated in this case. He further submits that they are in jail since 22.08.2021 i.e. from the date the case was lodged.

Learned APP represents the State submits that he has gone through the case diary and although there is recovery/seizure of 1.8 Kg. Ganja from the petitioners, it is ironical that their signature are missing from the seizure list.

Considering the aforesaid facts that the mandatory



provision of the N.D.P.S. Act has not been followed in this case and for the reasons best known the signature of the petitioners are missing from the seizure list; they are in jail since 22.08.2021 and charge sheet has already been submitted, this Court is inclined to grant him privilege of bail with certain conditions.

Let the petitioners be released on bail on furnishing bail bond of Rs.10,000/-(ten thousand) with two sureties of the like amount each in connection with Special Case No.32 of 2021 arising out of Jogbani P.S. Case No.187 of 2021 to the satisfaction of learned Sessions Judge, Araria, subject to following conditions:

(i) both the bailors of two petitioners should be Indian citizens who shall provide the document/paper issued by the Government of India to prove their respective credential;

(ii) the petitioners shall appear on each and every date before the Trial court and failure to do so for two consecutive dates without plausible reasons will entail cancellation of their respective bail by the Trial court itself;

(iii) the petitioners shall appear before the concerned police station every month for next six months to mark their presence;



(iv) the petitioners shall desist from committing any criminal offence again failing which the State shall be at liberty to take steps for the cancellation of their bail bonds.

With the aforesaid observations, the bail application is allowed.

(Rajiv Roy, J)

Prakash Narayan /-

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