

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50640 of 2022

Arising Out of PS. Case No.-189 Year-2022 Thana- BARACHATTI District- Gaya

VIKASH KUMAR Son of Mahendra Yadav R/V- Sandeshwar P.s- Fatherpur,
Dist- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Prabhat Kumar Singh
	:	Mr. Surendra Kumar Singh, Adv
For the Opposite Party/s	:	Mr.Nirmal Kumar Sinha

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 13-12-2022 Learned counsel for the petitioner is permitted to remove defect (s), as pointed out by the office, if any, within a period of four weeks on resumption of physical mode.

Heard learned counsel for the petitioner and learned A.P.P for the State.

The petitioner has preferred this application for grant of regular bail in a case registered under sections 18, 20 and 22 of the N.D.P.S. Act.

As per the prosecution case, on seeing the police, a miscreant sitting on a motorcycle started fleeing away who was apprehended. In the meantime, the driver and *khalasi* of the container (truck) wanted to ran away who were also apprehended. On being asked, they disclosed their names as



Chhotu, owner of the motorcycle, Gautam, driver of the container and Vikash Kumar, *khalasi* of the container. On search 3 kg opium was recovered from the dickey of the said motorcycle. 3 kg opium kept in 4 plastic packets was recovered from the box made below the seat of cabin of the said container (truck).

Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioner. The petitioner has clean antecedent as stated in para 3 of the bail petition. The petitioner is in custody since 05.03.2022.

Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that the seized contraband is of commercial quantity and hence the rigour of Section 37 of the N.D.P.S. Act will apply in this case.

As per Section 37 of the N.D.P.S. Act, the two conditions are that the Court should be satisfied with :-

(i) There are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) He is not likely to commit any offence while on bail.

If either of these two conditions is not satisfied, the



bar operates and the accused cannot be released on bail. This Court is of the opinion that the parameters of bail available under Section 37 of the Act have not satisfied in the facts of the instant case.

The Hon'ble Supreme Court in the case of *Narcotics Control Bureau v. Mohit Aggarwal 2022 SCC OnLine SC 891* has held that “*The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the N.D.P.S. Act.*”

Considering the aforesaid facts and circumstances, as well as the recovery of commercial quantity from the conscious possession of the petitioner. I am not inclined to enlarge this petitioner above-named on bail.

Learned Trial Court is directed to expedite the trial and conclude the same preferably within 9 months.

The bail petition stands rejected.

(Chandra Prakash Singh, J)

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