

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63889 of 2021

Arising Out of PS. Case No.-60 Year-2021 Thana- KUCHAIKOTE District- Gopalganj

VICKY KUMAR SHRIVASTVA Son of Sujit Shrivastva @ Sujeet Kumar Lal Resident of Village - Rani Ghat, Ward No. 10, P.S. - Virganj, District - Parsa (Nepal). At present Address - Resident of Village - Makunhiya, P.S. - Shursand, District - Sitamarhi.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR Bihar
2. The Union of India Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pankaj Kumar Dubey, Adv.
For the Opposite Party/s : Mr.Anant Kumar I, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 17-05-2022 Heard learned counsel for the petitioner and the learned A.P.P. for the State.

The petitioner seeks bail in a case registered for the offence under Sections 414, 420, 468, 471/34 of the Indian Penal Code and Sections 20(b)(II)(c), 23, 25, 29 of the NDPS Act.

Recovery is of 265.23 Kgs. of Charas (Hashish).

Learned counsel for the petitioner submits that the petitioner, who is of clean antecedent, is innocent and has not committed any offence. In fact, according to the F.I.R., 265.23 Kgs. of Charas is said to have been recovered from the pick up van of the petitioner, who is said to be the driver



of the vehicle in question. He further submits that nothing incriminating has been recovered from the conscious possession of the petitioner and he has no knowledge about the alleged recovery kept in the alleged pick up van, therefore, he has got no concern with the alleged recovery of 265.23 Kgs. of Charas. He also submits that the petitioner is not involved in illegal dealing of Charas. He further submits that the petitioner, who is of no fault, is rotting in judicial custody since 08.02.2021.

Learned A.P.P. for the State has, vehemently, opposed the prayer for bail of this petitioner and submits that a huge quantity to the extent of 265.23 Kgs. of Charas falling within the purview of commercial quantity has been recovered from the possession of the petitioner. He also submits that since the recovered quantity comes under the purview of commercial quantity, the petitioner seems to be engaged in dealing with the contraband substance like charas. Hence, the petitioner does not deserve to be enlarged on bail.

Since the quantum of recovery of Charas in this case falls within the purview of commercial quantity, which is defined as 1 Kg., this Court intends to refer Section 37 of



the Narcotic Drugs and Psychotropic Substances Act, 1985, which clearly depicts that the grant of bail in N.D.P.S. cases, where the recovery of commercial quantity of narcotic is alleged, is circumscribed. Section 37 says that for granting bail, the Court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences for which he has been charged, and further he is not likely to commit any offence while on bail.

This issue has also been considered by the Hon'ble Supreme Court in the case of ***State of Kerala and Ors. Vs. Rajesh & Ors.*** reported in ***2020 (12) SCC 122***.

In view of the aforesaid reference and the facts of the case, this court is of the view that the recovery of more than commercial quantity of Charas from the pick up van in question of which the petitioner is said to be the driver, would not justify that the petitioner had no knowledge of Charas kept in the pick up van or he was not involved in commission of such offence and also there is no material available to substantiate that the petitioner would not commit such offence in the event of release. Therefore, considering the quantum of recovery of Charas as well as the



mandate of Section 37, this Court is not inclined to enlarge the petitioner on bail at this stage. Accordingly, the prayer for grant of bail to the petitioner is rejected.

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

(Rajesh Kumar Verma, J)

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