

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64554 of 2021

Arising Out of PS. Case No.-153 Year-2020 Thana- CHAUSA District- Madhepura

Suraj Kumar, Son of Pramod Poddar, Resident of Village- Lauwalagan, ward no.10, P.S.- Chousa, Dist- Madhepura.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ashok Kumar, Adv.

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

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 05-05-2022 Learned counsel for the petitioner undertakes to remove all the defects as pointed out by office within two weeks after start of normal functioning of the Court.

Heard learned counsel for the petitioner and Mr. Md. Fahimuddin, learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in connection with Chousa P.S. Case No.153 of 2020 registered for the offences punishable under Sections 22, 23 and 24 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'N.D.P.S. Act'). He is in custody since 14.07.2020. The petitioner has got no criminal antecedent.

As per the prosecution story, 6 kgs of Ganja has been seized by the police kept in a jute bag in the Pan Gumati of the petitioner.



Learned counsel for the petitioner submits that from the FIR itself it would appear that the informant of the case is a sub-inspector of police who has allegedly seized 6 kgs of Ganja from a bag kept in the Gumati of the petitioner but while conducting such search and seizure the informant has not followed the safeguards provided under the Statute and without following the established procedure the search and seizure has been made. Learned counsel further submits that while lodging the FIR the police has registered case under Sections 22/23 and 24 of the N.D.P.S. Act but on a bare reading of Sections 23 and 24 of the N.D.P.S. Act it may be found that while Section 23 talks of illegal import of the narcotics drugs into India and export from India, Section 24 talks of punishment for external dealings by engaging in any trade of narcotic drugs after obtaining the same from outside India and supplying to any person outside India without the previous authorization of the Central Government or otherwise than in accordance with the conditions (if any) of such authorization under section 12.

It is his submission that on the face of the quantity of the narcotic drugs being 6 kgs, it is less than commercial quantity, hence rigours of Section 37 of the N.D.P.S. Act would not be attracted particularly when a bare reading of the



provision as contained in Section 24 shows that by no stretch of imagination it may be applicable against the petitioner. It is then submitted that the petitioner has remained in custody since 14.07.2020, he has no criminal antecedent and if released on bail there is no chance of his indulging in any other offence.

Learned APP for the State has though opposed the prayer for regular bail of the petitioner by saying that the FIR has been registered inter-alia under Section 24 of the N.D.P.S. Act, at this stage this Court having been impressed with the submission of learned counsel for the petitioner with regard to applicability of Section 24 of the N.D.P.S. Act but without going into the merit of the said contention and on finding that the quantity of narcotic substance like Ganja is less than the commercial quantity and the bar of Section 37 of the N.D.P.S. Act would not be attracted in such circumstance as also that the petitioner who has otherwise no criminal antecedent, against him there is no material to indicate that if released on bail he will again indulge in any offence, this Court directs that the petitioner above named be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Judge-IV, Madhepura



in connection with Chousa P.S. Case No.153 of 2020, subject to the condition as laid down under Section 437 (3) Cr.P.C.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

