

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68754 of 2021

Arising Out of PS. Case No.-190 Year-2021 Thana- BARGAINIA District- Sitamarhi

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1. Dhiraj Jaiswal Son of Dinesh Prasad Resident of Village - Munsa Chak, P.S.- Bairstania, District - Sitamarhi.
 2. Rabin Kumar @ Parwa Son of Shyamlal Ram @ Shyam Ram Resident of Village - Bengahi, P.S.- Bairstania, District - Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Union of India New Delhi

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Birendra Kumar, Advocate
For the Opposite Party/s : Md. Aslam Ansari, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 19-11-2022 Heard learned counsel appearing on behalf of the
petitioners and learned counsel appearing on behalf of the State.

Let the defect(s), if any, be removed within a period of
four weeks from today.

The petitioners seek bail in connection with Bairstania P.S.
Case No. 190 of 2021 registered for the offence under Sections 8 and
20(b) (II) (B) of the N.D.P.S. Act.

The both accused/petitioners are named in the F.I.R. and is
in custody since 07.09.2021.

The allegation against the petitioners is to have in
possession of contraband i.e., **Charas**, where petitioner no. 1 found
in possession of **93 gram of Charas** and petitioner no. 2 found in
possession of **78 gram of Charas**.



Learned counsel appearing on behalf of the petitioners submitted that the alleged recovery of **Charas** was not made from the conscious physical possession of these petitioners. It is submitted that the compliance of Section 42 and 50 of the N.D.P.S. Act was not made in present case, which is otherwise mandatory. It is also submitted that the compliance of Section 37 of the N.D.P.S. Act is not applicable in present case, as the recovered quantity of **Charas** is less than commercial quantity, as recovered from both the petitioners. While travelling over the argument it is submitted that the name of petitioners surfaced in the present case for the reason, as petitioner no. 1 is involved in 12 more criminal cases of different nature on the basis of confessional statement, where he is on bail in all cases and similarly, petitioner no. 2 made accused in 3 more criminal cases mostly, on the basis of confessional statement, where he is also on bail in all 3 cases. While concluding the argument, it has been submitted that investigation has been completed, for which, charge-sheet has been submitted, as such, there is no chance of tampering with the evidence.

Learned APP, while opposing the prayer of bail, fairly conceded that the recovered quantity of contraband i.e., **Charas** is less than commercial quantity.

Considering the facts and circumstances as mentioned above, as recovered quantity of contraband i.e., **Charas** is less than commercial quantity as recovered from both above named petitioners



coupled with the fact that charge-sheet has been submitted, let the petitioners, above named, are directed to be released on bail in connection with Bairgania P.S. Case No. 190 of 2021 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Court of Special Judge, Sitamarhi/concerned court, subject to the following conditions:

“(i) That the accused/petitioners shall not involve in the similar nature of offence till the conclusion of trial, failing which the State shall be at liberty to move before the learned Trial Court itself for the cancellation of bail bond of the petitioners.

(ii) Accused/Petitioners shall cooperate in the trial and shall be physically present on each and every date before the learned Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the learned Trial Court, only on medical ground of these petitioners duly supported by the documents.

(iii) That one of the bailors shall be deponent of the present bail petition.”

(Chandra Shekhar Jha, J)

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