

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64463 of 2021

Arising Out of PS. Case No.-75 Year-2021 Thana- SHERGHATI District- Gaya

Niraj Singh @ Tutu, S/O Guptershwar Singh, R/o village- Masadh (Masarh),
P.S.- Udwant Nagar, District- Bhojpur

... .. Petitioner/s

Versus

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

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 67419 of 2021

Arising Out of PS. Case No.-75 Year-2021 Thana- SHERGHATI District- Gaya

Munna Singh, Son of Surendra Kumar Singh @ Surendra Singh, Resident of
Village- Masadh (Masarh), P.S.- Udwant Nagar, Distt.- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. the Union of India

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 67914 of 2021

Arising Out of PS. Case No.-75 Year-2021 Thana- SHERGHATI District- Gaya

Santosh Paswan, Son of Subhash Paswan, Resident of Village- Masadh, P.S.-
Udwant Nagar, District- Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 69239 of 2021

Arising Out of PS. Case No.-75 Year-2021 Thana- SHERGHATI District- Gaya

Somnath Mahto @ Somnath Singh, Son of Ram Kishor Mahto, Resident of
Village- Masadh (Masarh), P.S.- Udwant Nagar, District- Bhojpur.

... .. Petitioner/s

Versus

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

... .. Opposite Party/s



Appearance :

(In CRIMINAL MISCELLANEOUS No. 64463 of 2021)

For the Petitioner/s : Mr. Sumeet Kumar Singh, Advocate

Mr. Anil Kumar Singh, Advocate

Mr. Samir Kumar Bharti, Advocate

For the Opposite Party/s : Mr. Satyendra Narayan Singh, APP

(In CRIMINAL MISCELLANEOUS No. 67419 of 2021)

For the Petitioner/s : Mr. Anil Kumar Singh, Advocate

Mr. Nikhil Singh, Advocate

For the Opposite Party/s : Mr. Awadhesh Kumar Singh, APP

(In CRIMINAL MISCELLANEOUS No. 67914 of 2021)

For the Petitioner/s : Mr. Surendra Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Dr. Ajeet Kumar, APP

(In CRIMINAL MISCELLANEOUS No. 69239 of 2021)

For the Petitioner/s : Mr. Anil Kumar Singh, Advocate

For the Opposite Party/s : Mr. Dr. Ajeet Kumar, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

5 17-10-2022 All the four bail applications arise out of the same police station case (NDPS case) and as such with the consent of the parties, they have been heard together and are being disposed of by this common order.

2. Learned counsel for the petitioners is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

3. Heard learned counsels for the petitioner and learned APP for the State.

4. The petitioners seek regular bail, who are in custody in connection with NDPS Case no. 12 of 2021, arising out of Sherghati P.S. Case No. 75 of 2021, registered for the offences punishable under Sections 8/20(b)(ii)(c)25/29/59(2) of Narcotic Drugs and Psychotropic Substances Act (hereinafter



referred to as 'the NDPS Act')..

5. The prosecution case is based on a written report of the Inspector, namely, Lallan Kumar, who stated that on a secret information that a huge quantity of ganja is being carried from a vehicle escorted by Honda City vehicle, constituted a team and intercepted the vehicle and apprehended four persons, who are petitioners before this Court. On interrogation, they disclosed their names and their statements have been recorded under Section 67 of the N.D.P.S. Act. They disclosed that their consignment of Ganja was coming from Orissa to Ara (Bihar) from a Pick-up van, bearing registration no. JH 01Z 0342, however, the same was intercepted by the officials of Excise. It is further alleged that the officials of Excise made a demand of Rs.5,00,000/- to release the Pick-up Van, in question, and, as such, they were going to Dobhi for getting the vehicle released. It is specifically alleged that the officers of Excise Department and Excise Sub-Inspector Mukesh Kumar in collusion with the other staff demanded bribe of Rs.5,00,000/- to release the said vehicle along with the Ganja carrying on the said vehicle. On the aforesaid information, the informant along with other officers of Economic Offences Unit raided the place where the Pick-up van was kept confined and apprehended the



constables/officials of Excise Department, who were allegedly responsible for making bribe for release of the vehicle along with the contraband. The team of Economic Offences Unit also apprehended the driver and Khalasi of the said Pick-up van and on search total 253 Kg of Ganja was recovered.

6. Learned counsels appearing on behalf of the petitioners made a general submissions that all the petitioners were apprehended while they were going to Varanasi and they have neither any concern with the Pick-up van, in question, nor with the recovered Ganja. It is submitted that admittedly no recovery has been made, much less, any incriminating material from the person or possession of the petitioners. On search, total cash of Rs. 63,050/- was recovered from all the persons and, as such, the case of the prosecution that they were going to Dobhi for getting the release of Pick-up Van, in question, after giving bribe of Rs.5,00,000/-, automatically gets demolish. It is next submitted that in the entire investigation, the prosecution has failed to disclose any material showing the complicity of the petitioners with the consigner of the Ganja. Further, there is no Call Detail Records showing the petitioners were, in any way, connected with any persons involved in trafficking of Ganja or any contraband substance. It is further submitted that on being



apprehended, the police personnel seized the mobile phones of all the petitioners and called the driver of Pick-up van from the mobile of one of the petitioner, namely, Munna Singh, in order to create the material against them, though the petitioners have neither talked to the driver/khalasi of Pick-up van nor with the Excise officials for releasing of the Pick-up Van along with the alleged consignment of Ganja. While concluding the submission, it is submitted at bar that none of the petitioners have any criminal antecedent and on the alleged date of occurrence all the petitioners, who are friends, were going to Varansi for their personal work, but unfortunately on suspicion they were apprehended and a false case has been made out without their being any cogent material. Counsels for the petitioners lastly submit that now the investigation of the crime is already complete and moreover all the witnesses are police officials and, as such, there is no chance of tampering with the evidences or intimidating the witnesses and they are ready to give undertaking that they will fully cooperate in the trial and they are ready to abide by all the terms, as would be imposed by this Court.

7. In course of submissions made on behalf of the learned counsels appearing on behalf of the petitioners, reliance



have been made on a judgment rendered by the Hon'ble Supreme Court in the case of **State of West Bengal Vs. Rakesh Singh**, reported in **Manu/SC/0854/2022** and submit that once the veracity of prosecution case against the accused persons is in serious doubt, further analysis on the other factors about financing the drug, trafficking and harbouring the offenders need not be undertaken because, when the story of planting of contraband is removed out of consideration, all other factors by which accused persons are sought to be connected with such alleged planting could be regarded to be false and fanciful at least at this stage. It is also submitted that no recovery has been made and as such the rigors, as provided under Section 37 of the NDPS Act would not be applicable, unless the prosecution would be able to prove that the accused persons have any way connected with the seized contraband. They emphatically submitted that Section 37 of the NDPS Act would not bar the release of the accused persons on bail, it only mandates that before release the Public Prosecutor must be given an opportunity to oppose the application for such release and where the Public prosecutor opposes the application, the Courts are to be satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to



commit any offence while on bail.

8. On the other hand, learned Central Government Counsel appearing on behalf of Union of India as well as learned APP for the State vehemently oppose the bail applications and submitted that from the materials available on record, it is crystal clear that on a tip of secret information that all the petitioners were coming from Orissa to Ara (Bhojpur) by escorting Pick-up van, in question, wherein a huge commercial quantity of Ganja, weighing 253 Kg was kept concealed in a cavity especially manufactured in the Pick-up Van and one of them, namely, Munna Singh, was in regular touch with the driver of the said Pick-up van. It is further submitted that the recovery of Ganja and seizure of the Pick-up Van has been made only on the basis of the statements of the petitioners. It has come that the Honda City car, on which all the four petitioners were found seated, were coming from Orissa after getting the Ganja loaded on Pick-up van. It is also submitted that from the statements of the driver and khilasi of the Ganja loaded Pick-up van recorded under Section 67 of the NDPS Act, it would show that a deal to illegally get release of the Pick-up van was made by all the accused persons, including the petitioners, and they were on way to finalize the deal for getting the release of Pick-



up Van. They lastly submit that non-availability of entire cash of Rs.5,00,000/- from the persons of the Honda City car cannot be ruled out other objects, evidences, establishing the illegal deal between the Ganja smugglers and the accused-officials of the Excise Department.

9. Before parting with the final outcome, it is needless to say that what amount to “conscious possession” was also considered in the case of **Dharampal Singh Vs. State of Punjab**, reported in **(2010) 9 SCC 608** wherein it was held that knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several **persons as opposed** to a private vehicle with a few persons known to one another. In the case of **Madan Lal Vs. State of Himachal Pradesh**, reported in **(2003) 7 SCC 465**, the Hon’ble Supreme Court observed that the term “possession” could mean physical possession, animus custody over the prohibited substance with animus exercise of dominion and control as a result of concealment, or personal knowledge as to the existence of the contraband and the intention based on such knowledge.

10. It is well settled that finding of the absence or



possession of contraband on the person of the accused person does not absolve it at the level of scrutiny required under Sections 37(1)(b)(c) of the N.D.P.S. Act.

11. Regard being had to the submissions made on behalf of the parties and considering the materials available on record, it is evident that the pick-up van, in question, laden with huge quantity of Ganja was recovered on the disclosure and at the instance of the petitioners, who were said to be escorted the Pick-up van right from Orissa to Ara and moreover the driver and Khalasi having categorically identified these four persons, who were get the Ganja loaded in Orissa in the Pick-up Van, apart from the fact that petitioner Munna Singh in Cr. Misc No. 67419 of 2021, who was sitting along with other petitioners in Honda City car, was in constant touch with the driver and Khalasi of the Pick-up van regularly and also the fact that the trial is in progress and the observations of the Hon'ble Supreme Court showing narrow parameters of bail available under Section 37 of the NDPS Act, this Court comes to the conclusion that there are no reasonable ground to believe that the petitioner is not indulged in the trafficking of huge quantity of Ganja, this Court is not persuaded to enlarge the petitioner on bail.

12. Accordingly, the prayer for bail of the petitioners



stands rejected.

(Harish Kumar, J)

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