

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52883 of 2022

Arising Out of PS. Case No.-164 Year-2022 Thana- RAXAUL District- East Champaran

1. Roludugin Alexey @ Rodugin Alexey @ Roldugin Alexey Son of Shri. Anatoliy Passport No.- 761463050, Son of Shri. Anatoliy, R/o Nakhimova 15, Maposad, Russia
2. Zherdev Ilia Son of Shri Vladimir passport No.- 662612041, S/o Shri Vladimir R/o 38 Keramzavoda St. 390007 Ryazan Russia
3. Balashova Anna D/o Shri. Vladimir Anatolievich Passport No. - 753913418, D/o Shri. Vladimir Anatolievich R/o Moscow Geroev Panfilovcev 16-2-60, Russia

... .. Petitioner/s

Versus

1. The State of Bihar
2. The AFRRO, ICP Raxaul, Bureau of Immigration, ICP, Raxaul Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. R.P. Luthra, Advocate
	:	Mr. Himanshu Luthra, Advocate
	:	Mr. Dinkar Kumar, Advocate
For the UOI	:	Mr. Rama Kant Sharma, CGC
	:	Mr. Manoj Kumar Singh, CGC
	:	Mr. Abhijeet Gautam, JC to ASG
For the State	:	Mr. Ganesh Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

7 22-11-2022 Heard learned counsel, Mr. R.P. Luthra, assisted by Mr. Himanshu Luthra and Mr. Dinkar Kumar, appearing on behalf of the petitioners, learned Central Government Counsel, Mr. Rama Kant Sharma, assisted by Mr. Manoj Kumar Singh and Mr. Abhijeet Gautam, appearing on behalf of Union of India and learned APP, Mr. Ganesh Prasad Singh 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 N.D.P.S. Case No. 26 of 2022 arising out of Raxaul, Haraiya (O.P.) P.S. Case No. 164 of 2022 registered for the offence under Section 14(b) of Foreigners Act, 1946 and Sections 20(b)II(c) and 23(c) of the N.D.P.S. Act.

All the accused/petitioners are named in the F.I.R. and are in custody since 03.04.2022.

The allegation against all the above named petitioners, who are Russian citizens, is to have in possession of total 6.380 Kg of contraband i.e., '*Charas*', out of which 3 Kg was recovered from accused/petitioner no.1, 2 Kg was recovered from accused/petitioner no.2 and 1.250 Kg was recovered from accused/petitioner no.3, while crossing Indo-Nepal border, having further allegation to remain in India after expiring their visas.

Learned counsel, Mr. R.P. Luthra, duly assisted by Mr. Himanshu Luthra and Mr. Dinkar Kumar, appearing on behalf of the petitioners submitted that petitioners have been falsely implicated in the present case, as the alleged recovered '*Charas*' was planted with them, as they failed to fulfill the



illegal gratification demanded by AFRRO (Assistant Foreigners Regional Registration Officer) officials, API Raxaul, who are othersise persons of clean antecedent. It is submitted that petitioners arrived at Raxaul Railway Station on 30.03.2022 and thereafter checked-in to Shyam International Hotel at about 11:20 pm on the same day, where they duly filled the 'C Form', which is mandatory to be filled by foreigners while checking-in to hotel, where one of the petitioners moved outside the hotel in the morning of 31.03.2022 at about 7:40 am to collect his breakfast and thereafter checked out from the hotel, collectively, for AFRRO Office, where it was told to them that they cannot move out freely without extending their visas, which is to be extended by Kolkata Office, being the concerned office of the said zone. It is submitted that the petitioners have already applied for extension of VISA with Mumbai Office and, therefore, have all rights to move freely till pendency of their visa applications. Learned counsel further pointed out that from afternoon of 31.03.2022 till 02.04.2022, all the petitioners were under custody of AFRRO, therefore, there is no question arise to have in possession of '*Charas*' and if it was so, it is clearly planted by AFRRO officials. While travelling over the argument, Mr. Luthra submitted that all the above named three



petitioners were physically frisked, abused and misbehaved by AFRRO officials and beaten with bamboos at immigration centre, admittedly, having no lady officer. It is submitted by learned counsel that problem arises on intervening night of 1/2.04.2022 when Advocate Mr. Himanshu Luthra reached at the Shyam International Hotel, Raxaul at about 2:00 am, in furtherance of the request/help, which was sought by one of the petitioners through his friend living in Goa for legal assistance. It is submitted that as Mr. Himanshu Luthra himself went to Raxaul and enquired Shri Ajay Kumar Pankaj, informant of this case, about the incident, as to why his clients were illegally detained, it was informed as petitioners' visas have been expired, they have been put under observation for completing the process of verification and, even, at this point of time, no allegation, as regard to possession of '*Charas*', was raised. Learned counsel further submitted that on 02.04.2022 at about 2:03 pm, in a very conniving manner, all the petitioners were forced to check out from the hotel with their belongings by immigration officers and were taken to AFRRO office at Raxaul in their official car, where Mr. Himanshu Luthra was present. The petitioners were asked to keep their bags in a room below the AFRRO office till they confirm their result on their visa



extension applications, but suddenly at about 4:30 pm Mr. Himanshu Luthra was informed that all the petitioners have been arrested on the ground of being found in possession of narcotics i.e., '*Charas*'. It is further submitted that compliance of Sections 42 and 50 of the N.D.P.S. Act was not made and the entire arrest is in violation of said mandatory provisions of N.D.P.S. Act. It is submitted that as petitioners were under illegal custody of immigration officers from 31.03.2022 onwards, therefore, non-compliance of mandatory provisions of Sections 42 and 50 of N.D.P.S. Act is an admitted position.

In support of the submission, learned counsel, Mr. R.P. Luthra relied upon the decisions of Hon'ble Supreme Court, as reported in the matter of *Karnail Singh vs. State of Haryana reported in (2009) 8 SCC 539* followed by subsequent decisions in *Sukhdev Singh vs. State of Haryana reported in (2013) 2 SCC 212* and *State of Rajasthan vs. Jagraj Singh @ Hansa reported in (2016) 11 SCC 687*.

Learned Central Government Counsel, Mr. Rama Kant Sharma, assisted by Mr. Manoj Kumar Singh and Mr. Abhijeet Gautam, while appearing on behalf of Union of India and learned APP, Mr. Ganesh Prasad Singh, while appearing on behalf of the State, submitted that electronic evidence, as



collected through CCTV footage clearly shows that one of the petitioners went outside the hotel with empty hands in the morning of 31.03.2022 at about 7:40 am and came to the hotel alongwith a bag containing 'Charas'. It is submitted that Section 37 of the N.D.P.S. Act puts a barrier, while dealing with such bail petition, where recovered narcotics/contraband is more than commercial quantity, as of the present case, where collectively and individually, the recovered quantity of 'Charas' is more than 1 Kg i.e., of commercial quantity. It is submitted that the activities of petitioners suggest organized crime, being part of international syndicate. Learned C.G.C., while travelling over the argument, submitted that as per Section 37(b)(2) of the N.D.P.S. Act, there is no reasonable ground for believing that petitioners are not guilty of such offence and that they are not likely to commit any offence, while on bail, as petitioners were in touch with Nepali citizen over mobile phone, having mobile number issued by Government of Nepal, and also the bags from which 'Charas' was recovered were, admittedly, belong to the petitioners. While exploring the expression **“reasonable grounds”**, learned senior counsel relied upon the matter of ***“Collector of Customs, New Delhi v. Ahmadalieva Nodira”*** reported in (2004) 3 SCC 549, a decision rendered by a Three



Judges Bench of Hon'ble Supreme Court, wherein it has been observed as:

*“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are : the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression **“reasonable grounds”** means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.” [emphasis added]*

Learned senior counsel, Mr. Rama Kant Sharma



further relied upon the matter of “*State of Kerala v. Rajesh*” as reported in (2020) 12 SCC 122, where Hon’ble Supreme Court observed as:

“20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”
[emphasis added]

While concluding the argument with above legal note, Mr. Rama Kant Sharma submitted that investigation of this case is still going on and as all the petitioners are foreigners, securing their presence during the trial would be difficult for the prosecution to establish its case.



In view of the facts and circumstances, as mentioned above, **as investigation of this case is still open, in the background of recovery of commercial quantity of narcotics/contraband i.e., ‘Charas’ from the possession of each of the above named three petitioners, and by taking legal note of Section 37 of the N.D.P.S. Act,** this Court is not inclined to grant bail to the petitioners, for the present.

Accordingly, the prayer of bail of all the above named three petitioners is rejected herewith.

(Chandra Shekhar Jha, J)

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