

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5883 of 2023

Arising Out of PS. Case No.-1 Year-2021 Thana- D.R.I District- Patna

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Dhananjay Yadav @ Dhananjay Kumar, S/o Late Birasi Yadav, R/v- Larhuari,
P.O.- Pillich, P.S.-Parbalpur, District- Nalanda, Bihar.

... .. Petitioner/s

Versus

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

... .. Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr. Mritunjay Kumar Nirala, Advocate
For the Opposite Party/s :	Mr. Satyendra Narayan Singh, APP
For the DRI :	Mr. Ranbir Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

6 15-03-2023 Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

2. Heard Mr. Mritunjay Kumar Nirala, learned counsel appearing on behalf of the petitioner, Mr. Ranbir Kumar, Sr. SC, for the DRI and learned APP for the State.

3. The petitioner renewing his prayer for bail, who is in custody in connection with Spl. Case No. 03 of 2021, arising out of DRI Patna Case No. 15 of 2020-21, registered for the offences punishable under Sections 20, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'NDPS Act').



4. Earlier the prayer for bail of the petitioner was rejected vide order dated 23.06.2022 in Cr. Misc. No. 48141 of 2021 after taking into consideration the recovery of huge commercial quantity of contraband (Ganja) from a truck wherein the petitioner was a Khalasi, apart from the complicity of this petitioner in the present crime.

5. At the outset, learned counsel for the petitioner submits that the petitioner being Khalasi of the Truck had no role in transportation of contraband and, in fact, he was not even aware about the consignment loaded by the driver in the truck, owner of the vehicle and the consigner of the goods. He further submits that even during the course of investigation, the call record obtained by the investigating officer does not show that he was in touch with any of the accused persons involved in the crime. He vehemently submits that from the statement recorded under Section 67 of the NDPS Act it is evident that he had started working just one month before the occurrence along with the driver, which fact has also been corroborated by the statement of the driver of the truck. He lastly submits that during the pendency of the present bail application, the driver of the truck has been declared juvenile and has been released from the custody by the jurisdictional Court in Cr. Appeal No. 133 of



2022 vide order dated 03.02.2023, the copy of the order has been brought on record by way of supplementary affidavit. While concluding his submissions, it is further submitted that no recovery has been made from the conscious possession of the petitioner as the petitioner had no control over the prohibited substance nor he is the owner of the truck, apart from the fact that he is in custody since 08.01.2021 and as such he remained in custody for over a period of two years.

6. On the other hand, learned counsel appearing on behalf of the DRI vehemently opposes the bail application and taking reliance on the judgment rendered by the Apex Court in the case of Union of India through Narcotics Control Bureau, Lucknow Vs. Md. Nawaz Khan, reported in (2021) 10 SCC 100 and submitted that a huge quantity of 576.650 kg Ganja has been recovered from the vehicle in which the petitioner was present and 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 view to few persons known to one another. He further submits that Section 37 of the NDPS Act regulates the grant of bail in cases involving offences under the NDPS Act wherein recovery is more than commercial quantity. He also submits that under



Section 37(1)(b) of the NDPS Act, the limitations on the grant of bail for offences involving a commercial quantity are:

(i) The prosecutor must be given an opportunity to argue the application for bail; and

(ii) there must exist “reasonable grounds to believe” that: (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.

7. Counsel for the State also opposes the bail application and submits that the complicity of the petitioner cannot be denied as he being Khalasi of the truck was accompanied with the driver and apprehended at spot.

8. At this juncture, learned counsel for the DRI submits that altogether five official witnesses have been examined and the trial is likely to be concluded, at the earliest.

9. However, this fact has been opposed by the learned counsel for the petitioner and submits that till date neither any seizure list witnesses nor the Forensic Science Laboratory experts have been examined and there is no likelihood of conclusion of trial in near future.

10. This Court having meticulously examine the submissions and the materials available on record. The Hon’ble



Apex Court in the case of Md. Nawaz Khan (supra) has been pleased to observe what amounts to “conscious possession” was considered in **Dharampal Singh Vs. State of Punjab, (2010) 9 SCC 608** where it was held that the knowledge of possession of the 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 **Mohan Lal Vs. State of Rajasthan**, reported in, **(2015) 6 SCC 222**, it has been observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances 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 this knowledge.

11. Before parting with the final conclusion, it would be apposite to say that the embargo provided under Section 37 of the NDPS Act does not forbid the Court to exercise its power as provided under Section 439 of the Code of Criminal Procedure but only circumscribe it by passing of the twin test of extending the proper opportunity to the prosecutor and reasonable grounds to believe of accused being not guilty, of an



offence, involving recovery of more than commercial quantity, and his susceptibility of involving in similar nature of crime in future.

12. Having heard the submissions made on behalf of the parties and considering the materials available on record as also the call details report which shows the petitioner was not in touch with any other suspect; and further the statement of the petitioner recorded under Section 67 of the NDPS Act, which is not admissible in evidence in view of the judgment rendered by the Apex Court in the case of **Toofan Singh Vs. State of Tamil Nadu**, reported in **(2021) 4 SCC 1** coupled with the fact that the petitioner is only a khalasi; having fair antecedent and the driver of the truck has been allowed privilege of bail in Cr. Appeal No. 133 of 2022, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs. 25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge - 13th Cum – Special Judge, Patna in connection with Spl. Case No. 03 of 2021, arising out of DRI Patna Unit Case No. 15 of 2020-21, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-



(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(Harish Kumar, J)

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