

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9683 of 2023

Arising Out of PS. Case No.-33 Year-2021 Thana- SUHAIL District- Gaya

VIKRAM KUMAR Son of Basant Mistri Resident of village - Dudhmaliya,
Salaiya, P.S.- Sohail, District - Gaya.

... .. Petitioner/s

Versus

1. The Union of India through D.R.I., Gaya Bihar
2. The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Syed Asgher Najmi
For the Opposite Party/s : Mr. K.N.Singh (A.D.S.G)

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

4 29-08-2023 Heard learned counsel for the petitioner and learned
counsel for the Union of India and learned Additional Public
Prosecutor for the State.

Petitioner seeks bail, who is in custody since
29.08.2021 in connection with Sohail P.S. Case No. 33 of 2021,
arising out of N.D.P.S. Case No.66 of 2021, F.I.R. dated
27.08.2021 for the offences punishable under Sections 8, 20(B)
(ii)(c), 25 and 29 of the N.D.P.S. Act.

Recovery is of total 1050 Gram liquid opium from the
possession of the petitioner.

Earlier the bail application of the petitioner has been
rejected by a co-ordinate Bench of this Hon'ble Court vide order
dated 31.03.2022 passed in Cr. Misc. No. 65987 of 2021.



Learned counsel for the petitioner submits that the petitioner has clean antecedent and he has falsely been implicated in the present case. He further submits that it appears from the F.I.R. as well as seizure list that 1050 Gram liquid opium has been recovered from the possession of the petitioner.

As per Narcotic Drugs and Psychotropic Substances Act, 1985, commercial quantity of Opium is 2.5 kg. and the small quantity of Opium is 25 gms. but the recovery in the present case is of 01 kg. 50 grams of Opium which is more than the small quantity.

The grant of bail in NDPS cases where the recovery of more than the small quantity of narcotic is alleged is circumscribed under Narcotic Drugs and Psychotropic Substances Act, 1985, Section 37 which says that before grant of bail, the Court must have reason to believe that petitioner has not committed the offence and in the event of release he would not commit similar offence.

The issue was considered by the Hon'ble Supreme Court in the case of *State of Kerala and Ors. Vs. Rajesh and Ors.*, reported in *2020(12) SCC 122* as well as in the case of *Narcotic Control Bureau Vs. Mohit Aggarwal* reported in *AIR 2022 SC 3444*.



The recovery of more than the small quantity of Opium from the possession of the petitioner would not justify that the petitioner had no knowledge of narcotic nor there is any material to substantiate that the petitioner would not commit such offence in the event of release.

Considering the aforesaid facts and circumstances, I am not inclined to grant the privilege of bail to the petitioner in connection with Sohail P.S. Case No. 33 of 2021, arising out of N.D.P.S. Case No.66 of 2021 pending in the court of learned Sessions Judge, Gaya.

Accordingly, the same stands rejected.

(Rajesh Kumar Verma, J)

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