

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10683 of 2023

Arising Out of PS. Case No.-726 Year-2022 Thana- BAGHA District- West Champaran

Motilal Chauhan @ Motilal Chaudhary Son of Dahari Chaudhary Resident of
village - Nibiyahwa Madhubani, P.S.- Dhanaha, District - West Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Prashant Kumar, Adv.

For the Opposite Party/s : Ms. Rina Sinha, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 04-05-2023 Heard Mr. Prashant Kumar, learned counsel

 appearing on behalf of the petitioner and Ms. Rina Sinha,

 learned Additional Public Prosecutor for the State.

The petitioner seeks regular bail, who is in custody in connection with Bagha P.S. Case No. 726 of 2022 registered for the offences punishable under Sections 8, 20(B)(ii)C of the NDPS Act.

In course of patrolling duty, the police saw that some persons carrying sack on their back. However, on noticing the police party, they threw their sacks and started fleeing away. On chase, two persons including the petitioner was apprehended. It is further alleged that altogether 60.700 Kg. of *ganja* like substance was recovered from five sacks and the maximum quantity of *ganja* in a sack was 15.400 Kg.



Learned counsel for the petitioner submits that there is no compliance of Section 50 of the NDPS Act, apart from there is a defiance of Section 100 of the Cr.PC. He further submits that from the FIR, it is evident that the five persons were carrying five sacks, however, on chase, the petitioner was apprehended. Hence, no recovery has been made from the conscious physical possession of the petitioner. He next submits that even for the sake of argument, it is presumed that the petitioner was carrying one of the sacks, at best he was carrying maximum 15.400 Kg. *ganja*, which is less than the commercial quantity and, as such, the rigorous provided under Section 37 of the NDPS Act, would not be attracted in the present case. He lastly submits that the petitioner has never been involved in any of the case related to NDPS Act. Though the petitioner has one criminal antecedent as has been mentioned in para-3 of the bail application, but it is unrelated to the NDPS Act.

On the other hand, learned counsel for the State submitted that altogether 60.700 Kg. *ganja* like substance has been recovered from the person or possession of the petitioner.

Regard being had to the submissions made on behalf of the parties and considering the fact that no recovery has been made from the conscious physical possession of the petitioner



and even if the allegation taken to be true that the petitioner was carrying one bag, which is less than the commercial quantity, coupled with the period of custody, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.20,000/- (Twenty thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge, West Champaran, Bettiah, in connection with Bagha P.S. Case No. 726 of 2022, 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.

(v) The court below shall verify the criminal antecedent of the petitioner and, in case, at any stage, it is found that the petitioner has concealed his criminal antecedent, the



court below shall take immediate step for cancelling the bail bond of the petitioner. However, the acceptance of bail bonds, in terms of the above-mentioned order, shall not be delayed for this purpose or in the name of verification.

(Harish Kumar, J)

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