

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18203 of 2023

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

Mithilesh Paswan, Son of Late Mahesh Paswan, R/v- Harnath Kundi, P.S.-
Udwant Nagar (Udbant Nagar), Distt.- Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Sinha, Advocate

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

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

5 12-07-2023 Heard Mr. Vijay Kumar Sinha, learned counsel
appearing on behalf of the petitioner and the learned APP for the
State.

2. This is the second attempt made on behalf of the petitioner renewing his prayer for bail, who is 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').

3. Earlier the prayer for bail of the petitioner was turned down vide order dated 17.10.2022 passed in Cr. Misc. No. 5870 of 2022 after taking into consideration the materials available on record including the fact that a huge quantity of Ganja was recovered from the Pick-up Van of which the



petitioner was Khalasi and the said Pick-up Van was escorted by the co-accused persons right from Orissa to Ara (Bhojpur) and moreover the driver and the petitioner (Khalasi) having categorically identified the accused persons, who were getting the Ganja loaded in Orissa in his Pick-up Van. It has also been taken note 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, apart from the fact that there are no reasonable ground to believe that the petitioner is not indulged in the trafficking of huge quantity of Ganja.

4. Be it noted that mandate of the law, in uncertain terms declare that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case and the "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.

5. It is well settled that the 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.

6. Mr. Sinha, learned counsel for the petitioner



vehemently submitted that the petitioner, being Khalasi of the said Pick-up Van was not even aware as to what was being loaded in the Pick-up Van by the consignor of the goods, inasmuch, as he has boarded on the aforesaid Pick-up Van at Udwant Nagar. He further submitted that the petitioner is in custody since 04.02.2021 and till date out of nine prosecution witnesses, only one prosecution witness has been examined and there is very bleak chances of trial being concluded in near future. The materials available on record are also not sufficient to prove the charges as alleged against him and, as such, keeping him behind the bar would serve no further purpose. The petitioner has all along been co-operating in the trial.

7. On the other hand, learned counsel for the State vehemently opposes the bail application and submits that there is no overwhelming cogent circumstances requiring fresh consideration.

8. Regard being had to the submissions made on behalf of the parties and considering the huge quantity of recovery of contraband and the materials suggesting the involvement of the petitioner, the prayer for grant of bail to the petitioner is hereby rejected.

9. Needless to say that if there would not be any substantive progress in the trial, he may renew his prayer for



bail after completion of three years in the custody.

(Harish Kumar, J)

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