

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16306 of 2022

Arising Out of PS. Case No.-381 Year-2021 Thana- BIDUPUR District- Vaishali

BIPAT RAI S/O LATE TULSI RAI R/V- MAIL, PAKARI, P.O.-
BHAIROPUR, P.S.- BIDUPUR, DISTT.- VAISHALI Petitioner/s
Versus

The State of Bihar Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 17313 of 2022

Arising Out of PS. Case No.-381 Year-2021 Thana- BIDUPUR District- Vaishali

SAHENDRA KUMAR Son of Sri Bipat Rai Resident of Village - Mail
Pakari, P.s.- Bidupur, Distt.- Vaishali. Petitioner/s
Versus

THE STATE OF BIHAR Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 16306 of 2022)

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

For the Opposite Party/s : Mr.Tarun Prasad Mandal, App

(In CRIMINAL MISCELLANEOUS No. 17313 of 2022)

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

For the Opposite Party/s : Mr.Pranav Kumar, App

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 22-02-2023

Heard learned counsel for the petitioners and the
learned APPs for the State.

As both the criminal miscellaneous petitions have
been filed by the accused persons of the same P.S. case, hence
they are being decided together by a common order.

Petitioners are languishing in jail in connection with
Bidupur P.S. Case No. 381 of 2021 registered for the offences
punishable under Sections 20(b)(ii)(c), 23(c), 27(A), 29 of the
Narcotic Drugs and Psychotropic Substances Act, 1985 (in short
“NDPS Act”) and Section 30(a) of the Bihar Prohibition and



Excise Act.

Allegedly, 122.670 kg. narcotic material believed to be *Ganja* and 110 litres country made wine kept in rubber tubes were recovered from the house of both the petitioners and said recovery was made in the presence of Circle Officer, Bidupur and two witnesses.

The main submissions advanced by the learned counsel Vijay Kumar Sinha appearing for both the petitioners are that the petitioners are father and son and they were neither arrested on the spot nor any incriminating article was recovered from their conscious possession, the petitioner Bipat Rai is an old person and the police did not follow the mandatory provisions of search and seizure of Section 100 of Cr.P.C. as well as the provisions of relevant sections of the NDPS Act, there is no independent witness to prove the alleged recovery of contraband and the investigation has been completed and without getting the FSL report to clear whether the seized material was a contraband or not, the police submitted the charge-sheet against both the petitioners. Further submission is that the signatures of both the petitioners were not taken on the search-cum-seizure memo and the case of the petitioners is running for prosecution's evidence and only one witness has



been examined till now. Further submission is that one co-accused namely Lalti Devi who happens to be the wife of petitioner Bipat Rai has been granted bail by a co-ordinate Bench of this Court vide order passed in Cr. Misc. No.17422 of 2022 and the case of both the petitioners stands on similar footing with her. Further submission is that any specific role of both the petitioners in keeping the alleged contrabands in their house has not been revealed by the prosecution.

Learned counsel for the petitioners has placed reliance upon following judgments of the Hon'ble Supreme Court as well as this High Court:

(i) Mossa Koya KP v. State (NCT of Delhi), decided by Hon'ble Apex Court in Criminal Appeal No.1562 of 2021 arising out of SLP (Crl) No.8647 of 2021;

(ii) Supreme Court Legal Aid Committee Representing Undertrial Prisoners V. Union of India and others, decided by Hon'ble Apex Court, reported in (1994) 6 SCC 731;

(iii) Nagdeo Rai v. the State of Bihar (Criminal Miscellaneous No.7347 of 2021), decided by Hon'ble Patna High Court;

(iv) Kashmira Singh v. State of Punjab, reported in



(1977) 4 SCC 291, decided by Hon'ble Apex Court;

(v) State of Rajasthan v. Jag Raj Singh @ Hansa decided by Hon'ble Apex Court in Criminal Appeal No.1233 of 2006.

Learned APPs appearing for the State have vehemently opposed the bail prayer of both the petitioners and submitted that the instant matter relates to recovery of huge quantity of narcotic material believed to be *Ganja* and the same falls in commercial quantity and the recovery was made from the house of the petitioners and not only the narcotic material but huge quantity of country made wine was also recovered from the house of the petitioners and in view of the limitation mentioned in Section 37 of NDPS Act, petitioners do not deserve to the privilege of bail.

Heard both the sides and perused the FIR and seizure memo attached to the FIR.

The instant matter relates to recovery of 122.670 kg. narcotic material believed to be *ganja* and 110 litres country made wine from the house of both the petitioners who happen to be father and son.

At first, I would like to refer the provisions of Section 37(1)(b) of the NDPS Act, which are the most relevant to the



present matter and the same are as follows:-

“37.(1)(b) no person accused of an offence punishable for³[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity]shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application,the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

From the above-mentioned provisions, one thing is quite clear that while granting bail to one in respect of an offence punishable under NDPS Act involving commercial quantity of narcotic material, the court concerned is bound to form the opinion that there are reasonable grounds for believing that such person is not guilty of alleged offence and he is not likely to commit any offence while on bail. If the materials available suggest even *prima facie* involvement of one in such type of offence, then such accused must not be released on bail in the light of the above provisions of Section 37(1)(b) of



NDPS Act. In the present matter, a huge quantity of narcotic material believed to be *Ganja* along with large quantity of country made wine was recovered from the house of both the petitioners and there is no the plea by the petitioners that they were not living in their alleged house when recovery of the contrabands were made from their house and when such large quantity of prohibited materials are kept in a particular house then the owner or a person who permanently resides in such house cannot take the defence that he had no knowledge about the presence of such materials in his house and it will be presumed that such materials were in his knowledge. In the present matter, the alleged narcotic contraband and wine were recovered from the house of both the petitioners and the same were in large quantity, so it can be easily presumed that the alleged contrabands were in their knowledge and the same were in their physical possession also and the said facts are sufficient to show the petitioners' *prima facie* involvement in the allegation of smuggling and keeping the alleged contrabands in their possession, so in view of the provisions of Section 37(1)(b) of NDPS Act, both the petitioners do not deserve to privilege of bail and it cannot be believed that both the petitioners were not involved in the commission of the alleged occurrence.



Learned counsel for the petitioners has vehemently argued that one co-accused namely Lalti Devi, who was carrying similar nature of allegation, has been granted bail by a co-ordinate Bench of this Court vide order passed in Cr. Misc. No.17422 of 2022, hence both the petitioners are also entitled to same privilege.

I find no force in the submission as the said co-accused was granted bail on different grounds and mainly considering her being a lady.

Learned counsel for the petitioners has placed reliance upon above-mentioned judgments of Hon'ble Apex Court as well as of this Court.

The principles laid down in the judgment of ***Mossa Koya KP (supra)*** mainly deal with suspension of sentence under Section 389 of Cr.P.C. and the said principles do not help the petitioners.

The principles laid down by the Hon'ble Apex Court in ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra)*** mainly dealt with the matter of undertrials prisoners who had been in jail for long and in the said case, the Hon'ble Apex Court directed the State Government to set up a review committee to review the cases of



undertrials who had been in jail for a long period and the main principles established in the said judgment are also not relevant in the present matter.

The judgment of this court passed in *Nagdeo Rai (supra)*, as referred to by learned counsel for the petitioner is also not relevant in the present matter as while deciding the said case, the Hon'ble Bench of this Court mainly took into account the custody period of the accused which had been more than six years and placed reliance on the judgment of the Apex Court passed in the case of *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and others, reported in (1994) 6 SCC 731*. The principles laid down in the said judgment are also not applicable in the present matter as both the petitioners have been languishing in jail since 08.08.2021 and hence principles of this referred judgment do not help the petitioners.

The principles laid down in the judgment of *Kashmira Singh (supra)* do not help the petitioners as the judgment was passed in different context in respect of the offences of IPC.

So far as the judgment of Hon'ble Apex Court passed in the case of *State of Rajasthan v. Jag Raj Sing @ Hansa* is



concerned, I am of the opinion that the principles laid down in the said judgment are also not helpful to the petitioners as while dealing with the matter involved in that case, the Hon’ble Supreme Court mainly took into account the non-compliance of the requirement of Sections 42 and 50 of NDPS Act.

After having discussed the above-mentioned facts and principles laid down by the Hon’ble Apex Court as well as this Court in the cases referred to by learned counsel for the petitioners, I am of the considered view that the case of both the petitioners is covered by the limitation mentioned in Section 37(1)(b) of the NDPS Act and there is sufficient *prima facie* material to show the involvement of both the petitioners in smuggling and keeping the alleged huge quantity of contrabands in their own house and hence, I am not inclined to enlarge both the petitioners on bail and their prayer for bail stands rejected.

(Shailendra Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.03.2023
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