

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20120 of 2023**

Arising Out of PS. Case No.-119 Year-2021 Thana- PARIHAR District- Sitamarhi

1. Pramod Mahto Son of Late Kishori Mahto Residents of Village Gamhariya, P.S. Bela , District Sitamarhi
2. Raj Kishore Mahto @ Raj Kishor Mahto Son of Bechan Mahto Resident of Village-Gamhariya, P.S. Bela, District Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa, Adv.
For the Opposite Party/s : Mr. Uday Pratap Singh, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 17-05-2023 Heard Mr. Ashhar Mustafa, learned counsel for the petitioners and Mr. Uday Pratap Singh, learned Additional Public Prosecutor for the State.

The petitioners seek regular bail, who is in custody in connection with Parihar P.S. Case No. 119 of 2021 registered for the offences punishable under Sections 8, 20(b)(ii)(C), 21(C), 22(C) and 23(C) of the N.D.P.S. Act.

Allegedly in course of vehicle checking, the police intercepted a Tata Pick-up vehicle. However, on noticing the police party, the driver of the vehicle, namely, Dinesh Ram, succeeded in fleeing away but the petitioners, who were sitting



in the Tata Pickup vehicle were apprehended and in course of search, total 159 Kg. of *ganja* was recovered.

Learned counsel for the petitioners submitted that the petitioners have neither any concern with the alleged vehicle nor with the incriminating *ganja* like substance and, in fact, on the alleged fateful day of the occurrence, both the petitioners got seated in the vehicle on the request of its driver, who were returning to their village and the aforesaid fact also fortified that the petitioners have fair antecedent, apart from the fact that during the course of trial, the seizure list witnesses have not supported the factum of recovery and they have turned hostile. He further submitted that the investigation also suffers from serious irregularities, inasmuch as the charge-sheet has been submitted without obtaining the FSL report. Reliance has been made on a judgment rendered by the learned Co-ordinate Bench of this Court in the case of **Ram Babu Yadav vs. The State of Bihar [Cr. Misc. No. 21326 of 2021]**. He next submitted that the co-accused Dinesh Ram, who is said to be kingpin and fled away from the place of occurrence, has been allowed the privilege of anticipatory bail by the learned Co-ordinate Bench of this Court vide order dated 16.02.2022 passed in Cr. Misc. No. 51623 of 2021.



Mr. Mustafa, while concluding his submission tried to impress upon this Court and submitted that Hon'ble Justice Krishna Iyer, pithily reminded the basic Rule of our criminal justice system is 'bail' not 'jail' and the said principle has been reiterated time and again by the Hon'ble Supreme Court.

Learned counsel for the State opposed the prayer of the petitioners and submits that from the materials available on record, *prima facie* it appears that the recovery has been made from the vehicle in which the petitioners were present and the possibility of their involvement cannot be ruled out. He further submits that since the trial is going on and likely to be concluded within a short span of time, the release of the petitioners would certainly hamper in the progress of the trial.

Before parting with the final outcome, it is needless to say that what amount to "conscious possession" was also considered in the case **Dharampal Singh Vs. State of Punjab, reported in (2010) 9 SCC 608**, wherein it was held that knowledge of possession of 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 the case of **Madan Lal**



Vs. State of Himachal Pradesh, reported in (2003) 7 SCC 465, the Hon'ble Supreme Court observed that the term "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.

It is well settled that 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.

The Scheme of Section 37 of the NDPS Act reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 Cr.PC, but is also subject to the limitation placed by Section 37 of the NDPS Act, which commences with non-obstante clause.

The mandate of law provides that the accused of offences under the NDPS Act, where the recovery is more than commercial quantity, should not be released on bail during trial unless the mandatory condition in Section 37, namely; (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and (ii) that he is not likely to commit



any offence while on bail are satisfied.

Regard being had to the submissions made on behalf of the parties and considering the legal position as also the fact the a huge amount of *ganja* total 159 Kg. was recovered from the Tata Pickup vehicle where the petitioners found sitting, this Court is not persuaded to enlarge the petitioners on bail, for the present.

It is expected that the learned Trial Court will take all the endeavours to conclude the trial, as early as possible, preferably within a period of four months.

In case, the trial is not concluded within the stipulated period, the petitioners would be at liberty to renew their prayer for bail.

(Harish Kumar, J)

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