

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24783 of 2022

Arising Out of PS. Case No.-5 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Dharmendra Kumar @ Nanki Rai Son of Dashrath Ray Resident of Village -
Birpur, P.s.- Jurawanpur, Distt.- Vaishali.

... .. Petitioner/s

Versus

Union of India through Department of Narcotics Control Bureau, Zonal Unit
Patna. Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Abhishek, Adv

For the Opposite Party/s : Ms. Renuka Sharma

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

4 03-01-2023 Heard learned counsel for the petitioner and learned APP for
the State.

This Court would expect that the petitioner's Counsel would
honour his undertaking in the instant proceedings regarding supply of
requisite court fee etc. within two weeks from the date he is called
upon to do so by the office.

Petitioner seeks bail in connection with Special Case (NDPS)
No. 20/2021 registered under Sections 8(c)/20(b)(ii)(C)/25/29 of
N.D.P.S. Act, 1985.

It is the prosecution case that based on some secret
information the officials have set up a checking on the road. During
the course of checking, the truck, on which the petitioner was sitting
behind the driver, has been stopped. The driver has disclosed that
151.100 KG *ganja* is concealed in a compartment behind the driver's



cabin, from which it is alleged that the same has been recovered. The petitioner is stated to be one of the carriers as he was also seated in the truck just behind the driver.

Learned counsel for the petitioner submits that petitioner has become victim of the circumstances. He was a passer-by and has been framed in this case because he refused to be a seizure list witness. It is under such circumstance, though he has no antecedent, he is in custody since 27.02.2021.

Learned counsel for Union of India submits that petitioner was recovered in the truck transporting commercial quantity of contraband. He was one of the carriers. It is submitted that sufficient material has come in the investigation to show his linkage. One such example is the CDR (Call Detail Record) linkage prepared during the course of investigation, from which it is apparent that the petitioner was in communication with the driver, owner of the vehicle and other persons involved in the trade, who are also co-accused persons.

Considering the rival submissions keeping in background the provisions of Section 37 of N.D.P.S Act, this Court is not inclined to allow the prayer for bail.

This Court would further take into consideration decision of the Hon'ble Apex Court in the case of *Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India and Anr.* reported in (1994) 6 SCC 731 wherein the Hon'ble Apex Court has held as follows:-



“....We were told by the learned Counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases. We, therefore, direct as under:

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the concerned Special Judge with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs. 50,000 with two sureties for like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of



Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under [Sections 31](#) and [31A](#) of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.....”

Having regard to the provisions contain in Section 37 of the N.D.P.S. Act, the petitioner's allegation being punishable with a minimum sentence of 10 years as per decision of Hon'ble Apex Court, the Court is not inclined to allow the petitioner's prayer, since his custody as of today is less than 2 years.

The application for bail is thus dismissed.

(Madhuresh Prasad, J)

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