

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28653 of 2023

Arising Out of PS. Case No.-13 Year-2022 Thana- GOVERNMENT OFFICIAL COMP.
District- Katihar

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Avinash Kumar son of Yugal Kishore Gupta Village- Mathurapur Ps-
Kahalgaon Dist- Bhagalpur Petitioner/s

Versus

The Union of India through the Superintendent of Police, Narcotics Control
Bureau Patna Zone, Karpr Ps Mohalla- Rajeev Nagar Dist- Patna
... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajnish Kumar, Advocate
For the UOI : Mrs. Renuka Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

5 10-08-2023 Heard Mr. Rajnish Kumar, learned counsel for the

petitioner and Mrs. Renuka Sharma, learned counsel appearing

on behalf of the Union of India.

2. Learned counsel for the petitioner is permitted to
remove the defect(s), as pointed out by the office, if any, within
a period of four weeks from today.

3. Petitioner seeks bail who is in custody since
12.04.2022 in connection with Special NDPS Case No. 19 of
2022 arising out of NCB/PZU/V/13/2022 for the offences
punishable under Sections 8(c), 20(b) (ii)(c), 25 and 29 of the
N.D.P.S. Act, 1985.

4. Recovery is of 795 kg of Ganja.

5. Learned counsel for the petitioner submits that
petitioner has clean antecedent and he has falsely been
implicated in the present case. He further submits that the



allegation as alleged in the F.I.R. is false and fabricated and the petitioner has not committed any offences as alleged in the F.I.R. He further submits that as per the allegation in the F.I.R. altogether 795 kg of Ganja has been recovered from the truck in question. He further submits that the petitioner has no concern at all with the alleged recovery of the contraband. He further submits that there is non-compliance of Section 42 and 50 of the NDPS Act.

6. Learned counsel appearing on behalf of the Union of India on the other hand vehemently opposed the prayer for bail of the petitioner and submits that all the formalities required under the N.D.P.S Act have been complied by the prosecution and the F.S.L. report confirms that the recovered contraband is Ganja and the recovered contraband is 25 times more than the commercial quantity, so there is embargo under Section 37 of the N.D.P.S. Act.

7. The grant of bail in NDPS cases where the recovery of commercial quantity of narcotic is alleged is circumscribed under Narcotic Drugs and Psychotropic Substance Act, 1985, Section 37 which says that before grant of bail, the Court must have reason to believe that petitioner has not committed the offence and in the event of release he would not commit similar



offence.

8. The issue was considered by the Hon'ble Supreme Court in the case of **State of Kerala and Ors. Vs. Rajesh and Ors.** reported in **(2020) 12 SCC, 122** as well as in the case of **Narcotic Control Bureau Vs. Mohit Aggarwal** reported in **AIR 2022 SC 3444** and **Union of India vs. Ajay Kumar Singh @ Pappu** reported in **2023 SCC OnLine SC 3456** dated 28.03.2023.

9. The recovery of huge quantity of Ganja recovered would not justify that the petitioner had no knowledge of the narcotic nor there is any material to substantiate that the petitioner would not commit such offence in the event of release.

10. Hence, I am not inclined to enlarge the petitioner on bail in connection with Special NDPS Case No. 19 of 2022 arising out of NCB/PZU/V/13/2022 pending in the Court of learned Additional Sessions Judge II cum Special Judge (NDPS Act), Katihar.

11. Prayer is refused.

(Rajesh Kumar Verma, J)

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