

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31989 of 2023

Arising Out of PS. Case No.-33 Year-2021 Thana- MOTIHARI MUFASIL District- East
Champaran

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Saheb Sahani S/O- Late Madan Sahani Village- Bikalyan Nawalpur Ps-
Sahebganj Dist- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Abhishek Kumar, Advocate
For the Opposite Party/s : Mr. Ajit Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

5 05-07-2023 Heard learned counsel for the petitioner and learned
APP for the State.

02. Let the defect (s), if any, as pointed out by the
office be removed within a period of four weeks.

03. In the present case, the petitioner seeks bail in
connection with NDPS Case No. 08 of 2021 arising out of
Muffasil P.S. Case No.33 of 2021 registered on 17.01.2021 for
the alleged offences under Sections 414, 420, 467, 468 and 34
of the Indian Penal Code, Sections 25(1-b)a, 26, 35 of the Arms
Act and Sections 20, 23, 25 of the Narcotic Drugs and
Psychotropic Substances Act.

04. As per prosecution case, while conducting
checking of vehicles, three persons on a motorcycle tried to



escape, who were apprehended after chase. Petitioner is one of the apprehended persons and from his possession 1 kg of *charas* was recovered. Recovery of 600 grams of *charas* was made from the possession of co-accused Santosh Sahani and one country made *katta* with one live cartridge was made from co-accused Rampukar Sahani.

05. Learned counsel for the petitioner submits that this is the second attempt of the petitioner to seek bail from this Court, as earlier the prayer for bail of the petitioner was rejected vide order dated 20.07.2022 passed in Criminal Misc. No. 53505 of 2021. Learned counsel further submits that co-accused Santosh Sahani @ Santosh Kumar has been granted bail by a Co-ordinate Bench vide order dated 12.10.2022 passed in Criminal Misc. no. 42682 of 2022 on the ground that C.F.S.L. report of the sample drawn from the seized contraband gave negative tests for presence of cannabinoids or active components of vegetative material of poppy plant though it gave positive tests for presence of nicotine. Learned counsel further submits that while rejecting the earlier bail of the petitioner, this Court directed the learned trial court to expedite the trial and conclude the same within a period of nine months and granted liberty to the petitioner to renew his prayer for bail, if the trial



was not concluded within the stipulated period. Learned counsel further submits that till date even charges have not been framed in this case and there is doubt over the nature of seizure since its test was not positive for presence of any narcotic drug or psychotropic substance. There has been complete disregard of the provisions of Section 50 and Section 42 of the N.D.P.S. Act. Provisions of search, recovery and seizure have all been flouted. The petitioner is in custody since 18.01.2021. The petitioner is having criminal antecedent of one case but he is on bail in that case.

06. Learned APP for the State opposes the prayer for bail submitting that though the C.F.S.L. report does not vindicate the prosecution story that the seized contraband was *charas*, another report from Regional Forensic Science Laboratory Bihar, Muzaffarpur, which has been received from the learned trial court is on record and this report shows the contraband to be *charas*. Learned counsel further submits that the petitioner was apprehended with 1 kg of *charas* and no new ground has been put forward to reconsider the prayer for bail of the petitioner.

07. Perused the record.

08. In this case F.S.L. report was called for from the



learned trial court and the learned trial court vide its letter dated 24.06.2023 has sent two reports one from C.F.S.L. Chandigarh and another from F.S.L. Muzaffapur and both reports are contradictory. Report from C.F.S.L., Chandigarh shows exhibit(s) sent for testing were not the samples of *charas* (Cannabis) and it was rather found to be containing metabolic phyto-chemicals normally present in tobacco leaves. On the other hand, the report of F.S.L. Muzaffarpur shows the exhibit(s) sent for sample test contained *charas* with ingredient of Tetrahydrocannabinol (T.H.C.). The learned APP is not in a position to explain this anomaly. It goes without saying that when there is doubt over the nature of contraband as to whether it would come under any of the Narcotic Drugs and Psychotropic Substances or not, the benefit would naturally go to the accused.

09. Having regard to the facts and circumstances and submissions made on behalf of the parties and considering the period of custody of the petitioner and delay in conclusion of the trial and doubtful nature of the contraband seized, the petitioner above named is directed to be released on bail on furnishing bail bonds of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of



learned Sessions Judge/Special Judge, Motihari, East Champaran in connection with N.D.P.S. Case No. 08 of 2021 arising out of Muffasil P.S. Case No. 33 of 2021 subject to the conditions mentioned in Section 437(3) of the Cr.P.C. and the following conditions:

- (i) One of the bailors will be a close relative of the petitioner.
- (ii) The petitioner will remain present on each and every date fixed by the court below.
- (iii) In case of absence for three consecutive dates or in violation of the terms of the bail, the bail bond of the petitioner will be liable to be cancelled by the court concerned.

10. Since, contradictory reports from forensic science laboratories have been received from the learned trial court regarding nature of the seized contraband, let a copy of this order be sent to the Director General of Police, Bihar for taking appropriate action at his end and submit a report before the learned trial court within three months and the learned trial court is directed to take further steps in this regard and also for conclusion of the trial since it has been directed to conclude the trial within a period of nine months vide previous order of this



Court dated 20.07.2022 passed in Criminal Misc. No. 53505 of
2021.

(Arun Kumar Jha, J)

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