

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29316 of 2022

Arising Out of PS. Case No.-5 Year-2021 Thana- D.R.I District- Patna

SUBHASH CHAUBEY @ BABA Son of Madan Chaubey Resident of
Village - Near Gram Chowk, P.S.- Kanti, Kolhua, Paigambarpur, Kolhua,
District - Muzaffarpur, Pin Code - 843108.

... .. Petitioner/s

Versus

1. The State of Bihar
2. N. C. B. Patna Zonal Unit Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Dharendra Kr. Sinha, Advocate Mr. Rahul Rathour, Advocate Mr. Yashpal Yadav, Advocate Ms. Soni Kumari, Advocate
For the Opposite Party/s :		Mr. Bishweshwar Ram, App
For Union of India	:	Mr. Anshuman Singh, Advocate Mr. Ranvir Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

8 24-02-2023 Let the defect(s), if any, pointed out by the office be removed within three weeks from the date of this order failing which the matter be listed again under the appropriate heading for necessary action.

The present criminal miscellaneous petition has been filed for the relief of regular bail.

Petitioner is an accused and languishing in jail in connection with Special Case No.133/2021 arising out of DRI Patna Unit Case No. 05/2021-22 registered for the offences punishable under Sections 20, 25 and 29 of NDPS Act, 1985 (in short NDPS Act), pending in the court of Additional Sessions



Judge XIII, Patna.

Prosecution's story, in brief, is that on 19.09.2021 at 10:20 p.m., a truck was seized by the D.R.I. Team near Murli Tola Plaza, Bachwara and two persons, namely, Chandan Kumar Jha (driver of the truck) and Rahul Kumar (companion of the driver) were arrested from the truck and thereafter they were brought along with the truck at D.R.I. office, Patna and on next day, i.e., 20.09.2021 at 05:30 a.m., the truck was searched from which 382.500 kg. narcotic substance like Ganja was recovered from the cavity of the truck which was secretly kept and during that course, a Wagon R car was also caught at Barauni Zero Mile in which three persons were caught, namely, Subhash Chaubey @ Baba (petitioner), Satendra Rai and Jagdish Kumar.

The allegation against the petitioner is that he along with two co-accused persons was escorting the alleged truck from Guwahati to Patna and during investigation, the ownership of the alleged truck was found in the name of wife of this petitioner and according to the prosecution, the petitioner is the main accused who smuggled the huge quantity of narcotic material from Guwahati to Patna and on the way near Patna, his truck was intercepted and petitioner himself was owner of the seized contraband.



The main submissions advanced by learned counsel Mr. Dharendra Kr. Sinha for the petitioner are that the petitioner has fair and clean antecedent and he has been languishing in jail since 20.09.2021 and against him, the investigation has been completed and he has been made accused merely on suspicion, surmise and conjecture and he was not found in or near the alleged truck. Further submission is that the petitioner along with two co-accused persons was found being seated in a Wagon R Car and their location when they were apprehended was at Barauni Zero Mile and the same was at the distance of more than 30 kilometers from the alleged place where the truck was seized and accordingly there was no link and connection between the alleged truck and the petitioner's vehicle. Further submission is that from the petitioner's vehicle, no recovery of any type of contraband was made and prosecution's allegation as to the petitioner escorting the alleged truck at the relevant time is completely on the basis of presumption and guess and in this regard, there is no concrete and reliable evidence and the prosecution is merely relying upon the statement of the petitioner and his wife recorded under Section 67 of the N.D.P.S. Act while as per settled principle laid down by the Hon'ble Apex Court in various



judgments such statement cannot be made the basis of the conviction under NDPS Act and as the petitioner was not found in possession of the alleged recovered contraband, hence the limitation mentioned under Section 37 of NDPS Act does not apply in the case of the petitioner. Further submission is that against the petitioner, there is criminal antecedent of one case.

On the contrary, Mr. Anshuman Singh, learned counsel appearing for the Directorate of Revenue Intelligence (D.R.I.) has vehemently opposed the bail prayer of the petitioner and submitted that the petitioner has made a false statement in paragraph no.3 of this petition regarding details of his criminal antecedent and as per the said statement, he bears a fair and clean antecedent but in actual Sahebganj P.S. Case No.437/2020 has been registered against him under various sections of the IPC and in this regard, the petitioner did not make any prayer to correct the said statement in paragraph no.3 by seeking permission from this Court and after filing the counter affidavit on behalf of the D.R.I., he had no option but to reveal the details of the criminal antecedent and accordingly he intentionally concealed his criminal antecedent of one case and only on this ground, present petition is not maintainable. It has been further submitted by learned counsel for the DRI that huge quantity of



382.500 kg. narcotic substance believed to be *Ganja* kept in 38 packets was found in cavity secretly made under the body of the alleged truck and the alleged Wagon R car in which the petitioner was found being seated along with two co-accused persons was found escorting the alleged truck and the said fact as well as other relevant facts were admitted by the petitioner in his statement recorded under Section 67 of the N.D.P.S. Act and the same is admissible in evidence and in the statement made by the petitioner recorded under Section 67 of N.D.P.S. Act, he revealed himself to be the owner of the alleged seized *Ganja* and also accepted the alleged truck being in the ownership of his wife and he further accepted that the truck was used under his supervision. Further submission is that in view of the provisions of Section 37 of N.D.P.S. Act, the petitioner, who is the main accused, is not entitled to be released on bail as there are sufficient materials and statements which are admissible in evidence to show his involvement in the smuggling of the alleged *Ganja*.

Learned counsel appearing for the DRI has placed reliance upon judgments of the Hon'ble Apex Court passed in the following cases:

(I) Union of India v. Rattan Malik @ Habul reported



in (2009) 1 SCC (Cri) 831;

(ii) Union of India v. Ram Samujh reported in 1999 (9) SCC 429;

(iii) Union of India through NCB, Lucknow v. Md. Nawaj Khan reported in 2021 (10) SCC 100.

Heard both the sides and perused the complaint, seizure memo and other relevant documents enclosed with the complaint filed by the DRI before the trial court. The instant matter relates to the recovery of 382.500 kg. narcotic material believed to be *Ganja* and the same was recovered from a truck. The seized contraband was found being hidden in a secret cavity which was made in the alleged truck and petitioner's wife is admittedly owner of the said truck at the distance of 30 kilometers from the alleged truck, the petitioner was found in a car along with two co-accused persons and on arrest, he accepted his active participation in the smuggling of the seized *Ganja* from Guwahati to Patna. Though the said statement was made under Section 67 of the N.D.P.S. Act but as per the prosecution, the petitioner was constantly in contact of other co-accused persons and his vehicle was found escorting the alleged truck and at the time of argument, learned counsel for the petitioner has not satisfied this Court about the petitioner's



travelling at the relevant time in the alleged car near the truck, though the seized narcotic material was not found in the physical possession of the petitioner but the above-discussed facts *prima facie* show that the petitioner was aware of the presence of alleged contraband in the truck of his wife as he was travelling at some distance from the alleged truck and he could not justify the reason of his travelling at that time near the truck in suspicious condition and in the case of Dharmpal Singh V. State of Punjab, reported in (2010) 9 SCC 608, it was observed by the Hon'ble Supreme Court that the knowledge of the possession of contraband has to be gleaned from the facts and circumstances of the case. As in the present matter alleged seized contraband was found secretly hidden in a cavity in the alleged truck, so only by this fact, it cannot be deemed that the petitioner had no knowledge of the said contraband and moreover from the statements made by learned counsel for the petitioner, I find no reasonable ground for believing that the petitioner was not involved in the smuggling of the alleged contraband and the alleged contraband falls under the commercial quantity, so in view of the bar mentioned in Section 37 of the N.D.P.S. Act, the petitioner is not entitled to be released on bail and his case is running at the initial stage of



trial and only one witness of prosecution has been examined till date. Accordingly, I find no force in the prayer for bail made by the petitioner, hence this petition stands rejected.

(Shailendra Singh, J)

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