

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32681 of 2022

Arising Out of PS. Case No.-2 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Aurangabad

Sanjay Kumar S/o Late Arjun Ray R/o village- Beyapur, P.S.- Maner, District- Patna

... .. Petitioner/s

Versus

Union of India

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh, Adv.

For the Opposite Party/s : Ms. Punam Kumari Singh, CGC

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

5 15-09-2023 Heard Mr. Anil Kumar Singh, learned counsel appearing on behalf of the petitioner and Mr. Punam Kumari Singh, learned counsel for the N.C.B.

2. The petitioner seeks regular bail, who is in custody in connection with NCB No. 2 of 2021 registered for the offences punishable under Sections 8(c) 20(b)(ii)(C), 25 and 29 of the Narcotic Drugs and Psychotropic Substance Act (for short 'the NDPS Act').

3. The prosecution case is based on the written report of Junior Intelligence Officer, NCB, Patna Zonal Unit alleging therein that on a secret information that one Truck (Tata 407) bearing registration no. BR01GA 9684 carrying a huge quantity of Ganja and escorted by Honda City Car bearing registration



no. WB06C 9552 coming from Odisha via Daltonganj, Aurangabad to Ara. On the aforesaid information, a team of NCB was constituted and intercepted both the aforesaid vehicles. The raiding party found two persons, namely, Mukesh Kumar and Chandan Kumar, who was driving Honda City car. Both the vehicles were taken to the police station, and on search 60 packets, each containing 5 Kg of Ganja, total 300 Kg Ganja, were recovered. Two persons, who were sitting in the Tata 407 were also apprehended and they disclosed their name as Gorakh Kumar and Sanjay Kumar (petitioner).

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner has neither any concern with the vehicle in question nor with the alleged recovered *ganja* like substance. He further submits that the petitioner was only a temporary *Khalasi* of the truck in question on the meager payment of Rs.5000/- per month and he was not even aware as to what was being carried by the transporter/driver of the truck and his job was only to keep the truck clean. He next submits that even during the course of investigation, no other material has come, suggesting the involvement of the petitioner in this case. Moreover, there is no compliance of Section 42(2) of the NDPS Act and, as such, it is fatal to the prosecution case. He



also submits that there is non-compliance of Section 50 of the NDPS Act and in support of his averment, he relies upon a judgment rendered by the Hon'ble Supreme Court in the case of **Narcotic Central Bureau v. Sukdeo Raj Sodhi [2011 (3) PLJR (SC) 63]**. He further submits that the recovery was made on 7.02.2021 and the sampling was also done on the alleged date, but the same has been sent to the FSL after a delay of three days, which also vitiates the prosecution case. He lastly submits that the petitioner is a man of fair antecedent and he has been incarcerating for over a period of two years and six months and there is no likelihood of the conclusion of the trial in near future.

5. On the other hand, learned counsel representing the NCB vehemently opposes the prayer of the petitioner and submits that the entire recovery was made from the Tata 407, in which the petitioner was seated with one another co-accused and, as such, the complicity of the petitioner cannot be denied. She further submits that the statement of the petitioner was also recorded under Section 67 of the NDPS Act, wherein he admitted this fact that on being allured by the traffickers, he had actively participated in the trafficking of narcotics and during the course of investigation ample materials have also come.



6. Regard being had to the materials available on record, as also the settled principle of law that while considering the bail application under the NDPS Act not only the limitations imposed under Section 439 of the Cr.P.C. is to be kept in mind, but also the restrictions placed under Section 37(i)(b) of the NDPS Act to be factored in. Section 37(i)(b) of the NDPS Act states“(i) the Public Prosecutor ought to be given an opportunity to oppose the application made by an applicant for release; (ii) If such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that a person/accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused persons is unlikely to commit offence while on bail.”

7. The expression reasonable grounds under Section 37(i)(b) of the Act would mean credible, plausible and grounds for the Court to believe that the accused person is not carried of the alleged offence.

8. The Apex Court in the case of **State of Kerala Vs. Rajesh, (2020) 12 SCC 122**, clarified that the entire exercise that a Court is expected to undertake under the Act under Section 37 of the NDPS Act is to see the availability of reasonable grounds for believing that the accused is not guilty of



the offences that he has been charged with and that he is unlikely to commit an offence under the Act, while on bail.

9. Considering the submissions made on behalf of the parties and the recovery of huge quantity of *ganja* more than 300 Kgs. and the embargo as provided under Section 37 of the NDPS Act, this Court is not persuaded to enlarge the petitioner on bail. Accordingly his prayer is rejected.

10. It is expected that the learned trial court will take all necessary measures to expedite the trial and conclude the same as early as possible.

(Harish Kumar, J)

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