

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35894 of 2023

Arising Out of PS. Case No.-328 Year-2022 Thana- DALSINGHSARAI District- Samastipur

Mukesh Kumar, aged about 39 years (Male), son of Vishnudeo Mahto,
resident of village- Bal Krishnapur Marwa, P.S.- Viddyapatinagar, District-
Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Union of India through NCB, Patna, Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. N. K. Agrawal, Sr. Advocate with
Mr. Pramod Kumar Singh, Advocate
Mr. Pravin Kumar, Advocate

For the State : Mr. Jai Narain Thakur, APP

For the Union of India : None

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

4 31-07-2023 Heard Mr. N. K. Agrawal, learned senior counsel for

the petitioner and Mr. Jai Narain Thakur, learned Additional

Public Prosecutor for the State. None appears for the Union of

India.

2. The petitioner apprehends arrest in connection with

Dalsingsarai PS Case No.328 of 2022 dated 26.08.2022,

instituted under Sections 8, 20(b)(ii)(c), 25, 29 of the Narcotic

Drugs and Psychotropic Substances Act (hereinafter referred to

as the 'NDPS Act') and Section 25(1-B) (a), 26 of the Arms Act.

3. The prosecution case, in short, is that on 26.08.2022



the informant along with other police personnel were on evening patrolling duty. During the course of patrolling, the informant saw a white coloured Swift Dzire Car bearing registration no. AS 01 DP 5828 coming from Begusarai. The police team gave signal to the car driver to stop the vehicle but he tried to flee away. Due to barricading put on the road, the driver could not flee away with the car. Five persons were found sitting in the car. They could not satisfactorily reply for not stopping the car on the signal of the police team. On search, two packets of Ganja containing 21 Kg. Ganja in each packet; totalling 42 Kg. Ganja was recovered from the dickey of the car as well as firearms and cartridges etc. were recovered from the possession of the co-accused Deepak Kumar. Apart from above, cash, ATM Card, Aadhar Card, and mobile phones were also recovered from the possession of the co-accused.

4. Learned senior counsel for the petitioner submitted that the petitioner is not named in the FIR and his name has come in the confessional statement of co-accused Deepak Kumar, who was arrested at the spot. Nothing has been recovered from the possession of the petitioner. Recovery has been made from the car in which all the named five accused persons were found sitting and they were arrested. Learned



senior counsel has relied upon the decision of the Hon'ble Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu* reported in *(2021) 4 Supreme Court Cases 1* and submitted that confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the eye of law. Lastly, it is submitted that the petitioner has clean antecedents.

5. Learned counsel for the Union of India is not present today. However, on the last occasion, learned counsel for the Union had appeared and relied upon a decision of the Hon'ble Supreme Court in the case of *Narcotics Control Bureau Vs. Mohit Aggarwal* (Criminal Appeal Nos. 1001-1002 of 2002) and referred to paragraph no. 7 of the judgment. On going through the aforesaid judgment, this Court is of the opinion that the facts of the said case is totally different. In the aforesaid case, recovery was made on the basis of confessional statement of Mohit Aggarwal from the godown of the co-accused. In the facts and circumstances of the case, the judgment of **Mohit Aggarwal** (supra) is not applicable in the case of the petitioner.

6. Learned APP submitted that total 42 Kg. Ganja was recovered and the petitioner has been named by the co-accused in his confessional statement.



7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within four weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the District & Sessions Judge, Samastipur, in Dalsingsarai PS Case No.328 of 2022, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further (i) that the petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court and on his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below, (ii) that one of the bailors will be his own blood relation, preferably father, mother, brother, sister and or his wife, (iii) that the bailor shall also state on affidavit that he will inform the court concerned if the petitioner is made accused in any other case of similar nature after his release in the present case and thereafter the court below will be at liberty to initiate the proceeding for cancellation of bail on ground of misuse, and (iv) that if the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for



cancellation of bail.

8. The application stands allowed.

(Khatim Reza, J)

J. Alam/-

U			
---	--	--	--

