

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35474 of 2023

Arising Out of PS. Case No.-120 Year-2021 Thana- KURSAILA District- Katihar

Md. Rezabul @ Md. Rajabul Son Of Md. Basir Miyan Village- Baluaa Bazar
Ps- Baluaa Bazar Dist- Supaul

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ratnesh Kumar Singh, Advocate
For the Opposite Party/s : Mr.Akhileshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 24-07-2023 Heard learned counsel appearing on behalf of the
petitioner and learned APP appearing on behalf of the State.

2. The petitioner seeks bail in connection with
Kursela P.S. Case No.120 of 2021 registered for the offence
under Sections 20 and 22 of the N.D.P.S. Act.

3. The accused/petitioner is not named in the F.I.R.
and is in custody since 28.01.2023.

4. The allegation against the petitioner is to have in
possession of 298 kilograms of contraband i.e., *ganja* alongwith
other named co-accused persons.

5. Learned counsel appearing on behalf of the
petitioner submitted that the alleged recovery of contraband i.e.,
ganja was made from the house of co-accused Vikash Kumar
Mandal, who is not connected in any manner with this



petitioner. It is further submitted that the name of petitioner surfaced in the present case on the basis of confessional statement of co-accused, Vikash Kumar Mandal, whereafter his confessional statement was also obtained under Section 67 of the N.D.P.S. Act but as per the settled ratio in ***Toofan Singh v. State of Tamil Nadu***, same is inadmissible in the trial as reported through ***(2021) 4 SCC 1***. It is also pointed out that nothing surfaced during the course of investigation, save and except confessional statement of co-accused and self-confessions, which may connect petitioner, *prima facie*, with the alleged recovery of the contraband i.e., *ganja* from the house of co-accused, Vikash Kumar Mandal. It is submitted that recovery not appears from the physical possession/house of this petitioner, therefore implication of Section 37 of the N.D.P.S. Act not appears to be applicable in the present case. While concluding the argument, it is submitted that similarly situated co-accused, namely Gopal Shah, has already been granted bail by one of the learned Co-ordinate Bench of this Court through Cr. Misc. No. 38506 of 2023 vide order dated 12.07.2023 and moreover, investigation of this case has been completed, for which, charge-sheet has already submitted, as such, there is no chance of tampering with the evidence.



6. Learned APP appearing on behalf of the State, opposes the prayer for bail.

7. In view of the facts and circumstances as mentioned above and by taking note of the fact as recovery of alleged contraband i.e., *ganja* made from the house of co-accused Vikash Kumar Mandal, not from this petitioner coupled with the fact that charge-sheet has already submitted, where petitioner is in custody since 28.01.2023, accordingly, petitioner, above named, is directed to be released on bail in connection with Kursela P.S. Case No.120 of 2021 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional District Judge-II, Katihar/concerned court, subject to the conditions as mentioned under Section 437(3) of the Cr.P.C.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

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