

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.34919 of 2023**

Arising Out of PS. Case No.-333 Year-2022 Thana- DUMRAO District- Buxar

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FATEH NARAYAN RAI @ KUNDAN RAI Son of Vishnu Dayal Rai R/O  
Lalganj Karvi, Ward No.- 03, P.S.- Dumraon, District - Buxar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate  
For the Opposite Party/s : Mrs. Anita Kumari, APP

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**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY**  
**ORAL ORDER**

2      12-07-2023                      Heard learned Senior Counsel for the petitioner and  
  
learned APP for the State.

The petitioner is an accused in connection with  
NDPS Case No. 45 of 2022 arising out of Dumraon P.S. Case  
No. 333 of 2022 registered for the offences under sections 20(B)  
(ii)(c), 27(a) and 29 of the NDPS Act lodged on 31.07.2022 by  
the informant, Bindeshwar Ram.

As per the prosecution story, the informant namely  
Bindeshwar Ram, who happens to be S.I. cum S.H.O. Dumraon,  
Police Station, stating therein that, on 30.07.2022 at about 11:00  
PM he got secret information that, Kundan Rai of village Karvi,  
Ward No. 3, who runs General store at Railway Station has



brought "*Ganja*" and he is at his home right now. For verification of the information and to take appropriate action, the informant proceeded for the place of occurrence with other police personnel and CO Dumraon under the direction of higher officials.

After reaching in the village Karvi, the informant found the house of Kundan Rai and surrounded the same. Informant further alleged that, he couldn't find any independent witness due to night and he searched the house in presence of the members of raiding team as witnesses. After search being made, the police team recovered 4 packets of "*Ganja*" kept beneath the bed and some loose "*Ganja*" in a white colour plastic bag.

Informant saw one person there who disclosed his name as Fateh Lal Rai @ Kundan Rai and after asking about "*Ganja*" he stated that, he runs a shop at Station where he sells the said "*Ganja*". After weighing the recovered "*Ganja*", the police team found the weight of "*Ganja*" as (i) 5 KG and 900 Grams (i) 4 KG and 400 Grams (iii) 5 KG and 900 Grams (iv) 4 KG and 900 Grams from all four packets and 2 KG loose Ganja, total 23 KG and 100 Grams Ganja. Police team also recovered packets to pack the Ganja weighing 1 KG and 100 Grams and a



Mobile phone from Kundan Rai. Recovered articles were seized and seizure list was prepared. Accordingly, the FIR.

It has been contended by the learned Senior Counsel that although the recovery/seizure has been shown to be 23 kg., the fact remains that a bare perusal of FIR would show that no mandatory provision as envisaged under the NDPS Act have been followed.

The police themselves are the witnesses in the matter and further separate packets of different quantities have been recovered/seized which cannot be attributed to a person in a joint house. The samples were not taken on the spot. The last submission is that he is in custody since 31.07.2022 (paragraph 11 of the bail application) and do not have criminal antecedent.

Learned APP for the State, on the other hand, opposes the prayer for bail stating that quantity crosses commercial one of 20 kg.

To this, learned Senior Counsel submits that different quantities have been clubbed together to make it 23 kg. just to keep the petitioner behind bar and in any case, the recovery is from a joint house and only because of his presence, all the separate packets cannot be attributed to him.

Taking into account the aforesaid submissions put



forward by learned Senior Counsel as also that prima facie, it appears that the provisions of sections 50 and 42 of the NDPS Act have not been followed, this Court is inclined to extend him privilege of bail after framing of the charges.

Let the petitioner be released on bail after framing of the charges on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of like amount each to the satisfaction of the learned District and Sessions Judge cum Special Judge NDPS, Buxar in connection with NDPS Case No. 45 of 2022 (arising out of Dumraon P.S. Case No. 333 of 2022), subject to the following conditions:-

(i) one of the bailor should be the family member of the petitioner who shall provide official document to show his *bona fide*;

(ii) the petitioner shall appear on each and every date before the Trial court and failure to do so for two consecutive dates without plausible reason will entail cancellation of his bail bond by the Trial court itself;

(iii) the petitioner shall appear before the concerned police station every month till trial to mark attendance;

(iv) the petitioner shall in no way try to induce or promise or threat the witnesses or tamper with the evidences,



failing which the State shall be at liberty to take steps for  
cancellation of his bail bonds;

(v) the petitioner shall desist from committing any  
criminal offence again failing which the State shall be at liberty  
to take steps for cancellation of the bail bonds.

With the aforesaid observations, the bail application is  
allowed.

**(Rajiv Roy, J)**

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