

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39782 of 2023

Arising Out of PS. Case No.-384 Year-2022 Thana- BUXAR MUFFSIL District- Buxar

ASHOK KUMAR PAL son of Late Rajnath Pal Village- Jagdishpur Ps-Buxar
Muffasil Dist- Buxar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Amit Kumar Pandey, Advocate

For the Opposite Party/s : Mr. Raj Ballabh Singh, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

2 12-07-2023 Heard learned counsel for the petitioner and learned
A.P.P for the State.

The petitioner has preferred this application for grant of regular bail in connection with NDPS Case No. 07 of 2023 arising out of Buxar (Muffasil) P.S. Case No. 384 of 2022 dated 02.09.2022 registered for the offences punishable u/s 414 of the Indian Penal Code and under sections 20B, 22C, 25, 29 of the NDPS Act.

As per the prosecution case, total 121.407 kgs of *Ganja* was recovered from a Bolero vehicle and the petitioner along with the other co-accused persons was sitting inside the said vehicle and they were apprehended who disclosed that the said *Ganja* was carried by us which belonged to the co-accused



persons, Arun Kumar and Abhay Kumar Singh.

Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioner. Similarly situated co-accused persons have already been granted bail by the co-ordinate bench of this court *vide* order dated 12.04.2023 passed in Cr. Misc. No. 6870 of 2023. The petitioner has got two other criminal cases as stated in para 3 of the bail petition. The petitioner is in custody since 03.09.2022.

Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that total 121.407 kgs of *Ganja* was recovered from the said vehicle which is of commercial quantity. The petitioner was apprehended on the spot and the said contraband was recovered from the conscious possession of the petitioner while the case of the petitioner is on different footing to that of the co-accused persons who have already been granted bail by the co-ordinate bench of this court *vide* order dated 12.04.2023 passed in Cr. Misc. No. 6870 of 2023 as they were not apprehended on the spot and nothing has been recovered from the conscious possession of the co-accused persons while the petitioner and



the other co-accused were travelling in the said Bolero vehicle with the seized contraband.

As per Section 37 of the N.D.P.S. Act, the two conditions are that the Court should be satisfied with:-

(i) There are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) He is not likely to commit any offence while on bail.

If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail. The Court is of the opinion that the parameters of bail available under Section 37 of the Act have not satisfied in the facts of the instant case.

The Hon'ble Supreme Court in the case of **Narcotics Control Bureau v. Mohit Aggarwal 2022 SCC OnLine SC 891** has held that “ The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the N.D.P.S. Act.”

Considering the aforesaid facts and circumstances of the case as well as the recovery of commercial quantity of



Ganja i.e. 121.407 kgs from the conscious possession of the
petititioner, I am not inclined to enlarge the petitioner on bail.

The application stands rejected.

(Chandra Prakash Singh, J)

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