

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44550 of 2023

Arising Out of PS. Case No.-179 Year-2022 Thana- BHAPTIAHI District- Supaul

Pradeep Kumar @ Pradeep Yadav Son Of Bindeshwari @ Bindehswari Yadav
Resident Of Ward No. 07, Bhaptiyahi, Ps- Bhaptiyahi, District- Supaul

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bijendra Kumar Singh, Advocate

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

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 02-08-2023 Learned counsel for the petitioner is permitted to remove defect (s), as pointed out by the office, if any, within a period of four weeks on resumption of physical mode.

2. Heard learned counsel for the petitioner and learned A.P.P for the State.

3. The petitioner has preferred this application for grant of regular bail in connection with Bhaptiyahi P.S. Case No. 179 of 2022 dated 29.12.2022 registered for the offences u/ss 8/20 (C) (ii) A/ 21 (C) of the NDPS Act.

4. As per the prosecution case, total 363.150 kgs of *Ganja* was recovered and out of which 114.5 kgs of *Ganja* behind the house of the co-accused Binod Kumar Yadav and Amod Kumar Yadav, 158.4 kgs of *Ganja* from the house of the co-accused Jay Krishna Yadav, 16.450 kgs of *Ganja* from the house



of the co-accused Kamleshwari and five sacks of *Ganja* weighing 73.5 kgs were recovered under straw from back of the house of the petitioner who told that the said *Ganja* was brought from Nepal.

5. 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. The petitioner has clean antecedent as stated in para 3 of the bail petition. The petitioner is in custody since 29.12.2022.

6. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that the seized *Ganja* was of commercial quantity i.e. 73.5 kgs. Learned APP has further submitted that the petitioner is a smuggler of narcotics drugs and psychotropic substance. The petitioner was arrested on the spot. The petitioner has been in custody for less than one year. Hence, it is not a prolonged incarceration.

7. 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.

8. 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.

9. 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.*”

10. Considering the aforesaid facts and circumstances of the case as well as the recovery of commercial quantity of *Ganja* i.e. 73.5 kgs from the conscious possession of the petitioner and finding no merit in the contention of learned counsel for the petitioner, I am not inclined to enlarge the petitioner above-named on bail.

11. The application stands rejected.

(Chandra Prakash Singh, J)

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