

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46274 of 2023

Arising Out of PS. Case No.-102 Year-2022 Thana- SURSAND District- Sitamarhi

Rakesh Kumar Mandal S/O Arjun Mandal R/O Village- Raima, P.S-
Saharghat, Distt.- Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Jagjit Roshan, Advocate

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

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 12-09-2023 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. Petitioner seeks bail who is in custody since 04.03.2022 in connection with Sursand P.S. Case No. 102 of 2022 F.I.R. dated 03.03.2022 for the offences punishable under Sections 414 of the Indian Penal Code along with Sections 8(C), 20(b) (ii)(C), 22(C), 23(C), 25 and 29 of the N.D.P.S. Act.

3. According to prosecution case, recovery of seven packets weighing 95.3 kg Ganja has been made.

4. Learned counsel for the petitioner submits that petitioner has clean antecedent and he has falsely been implicated in the present case. He further submits that from bare perusal of the F.I.R. and seizure list, nothing incriminating article has been recovered from the possession of the petitioner



and the recovery has been made from the vehicle in question. He further submits that the petitioner is neither the driver nor owner of the vehicle in question. He further submits that from the bare perusal of the F.I.R. it appears that 108.6kg of Ganja has been recovered from the vehicle in question. Learned counsel for the petitioner submits that the petitioner has no concern at all with the alleged recovery of Ganja and there is non-compliance of Section 42 and 50 of the N.D.P.S. Act. He further submits that it appears from the F.I.R., itself that, thereafter, 95.3kg Ganja was recovered from the house of the co-accused person, namely *Awinash Kumar @ Vicky*.

5. The learned Additional Public Prosecutor has vehemently opposed the prayer for bail of the petitioner and submits that the recovered contraband is more than the commercial quantity so there is embargo under Section 37 of the N.D.P.S. Act and the FSL report also suggest that the recovered contraband is Ganja.

6. The grant of bail in N.D.P.S. cases where recovery of commercial quantity of narcotic is alleged is circumscribed under Narcotic Drugs and Psychotropic Substances Act, 1985, Section 37 which says that before grant of bail, the Court must have reason to believe that petitioner has not committed the



offence and in the event of release he would not commit similar offence.

7. The issue was considered by the Hon'ble Supreme Court in the case of *State of Kerala and Ors Vs. Rajesh & Ors*, reported in *2020(12) SCC 122* as well as in the case of *Narcotic Control Bureau Vs. Mohit Aggarwal in Cr. Appeal Nos. 1001-1002 of 2022* arising out of *Special Leave to Appeal (CRL.) No. 6128-29 of 2021*.

8. The recovery of huge quantity of Ganja from possession of the petitioner would not justify that the petitioner had no knowledge of the narcotic nor there is any material to substantiate that the petitioner would not commit such offence in the event of release.

9. Considering the aforesaid facts and circumstances, I am not inclined to enlarge the petitioner on bail in connection with Sursand P.S. Case No. 102 of 2022 pending in the court of learned Sessions Judge – cum- Special Judge, Sitamarhi.

10. Prayer is refused.

(Rajesh Kumar Verma, J)

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