

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43321 of 2022

Arising Out of PS. Case No.-150 Year-2021 Thana- SIWAIPATTI District- Muzaffarpur

MOHAN KUMAR Son of Kavindra Prasad @ Kavindra Prasad
Chandrawansi Resident of Village- Krishna Toli, Brahmpura, P.s.-
Brahmpura, Distt.- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Pushpendra Kumar Singh, Adv.

For the Opposite Party/s : Mr. Harendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

7 27-04-2023 Heard learned counsel for the petitioner and the
learned A.P.P. for the State.

The petitioner seeks bail in connection with NDPS
Case No. 19 of 2022 arising out of Siwaipatti P.S. Case No.
150 of 2021 registered for the offence under Sections 8, 20
and 22 of the NDPS Act.

Recovery is of 1 Kgs. of Charas.

Learned counsel for the petitioner submits that the
petitioner is innocent and has not committed any offence. In
fact, according to the F.I.R., 1 Kg. of Charas is said to have
been recovered from the possession of the petitioner. He
further submits that nothing incriminating has been
recovered from the conscious possession of the petitioner



and he has no concern with the alleged recovery of Kg. of Charas. He also submits that the petitioner is not involved in illegal dealing of Charas. He further submits that the petitioner, who is of no fault, is rotting in judicial custody since 22.11.2021.

Learned A.P.P. for the State has, vehemently, opposed the prayer for bail of this petitioner and submits that a huge quantity to the extent of 1 Kg. of Charas falling within the purview of commercial quantity has been recovered from the possession of the petitioner. He also submits that since the recovered quantity comes under the purview of commercial quantity, the petitioner seems to be engaged in dealing with the contraband substance like charas. Hence, the petitioner does not deserve to be enlarged on bail.

Result of examination of Forensic Science Laboratory is as under;

“The blackish brown coloured uneven shaped semi substance contained in small tin container as described above was found to be “CHARAS” containing Tetrahydrocannabinol (THC) as their chief intoxicating ingredient. Charas is also known as “HASHISH” which is the resinous exudate of the flowering and fruiting tops of the female plant of Cannabis Sativa.”



Since the quantum of recovery of Charas in this case falls within the purview of commercial quantity, which is defined as 1 Kg., this Court intends to refer Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which clearly depicts that the grant of bail in N.D.P.S. cases, where the recovery of commercial quantity of narcotic is alleged, is circumscribed. Section 37 says that for granting bail, the Court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences for which he has been charged, and further he is not likely to commit any offence while on bail.

This issue has also been 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*** reported in **AIR 2022 SC 3444**.

In view of the aforesaid reference and the facts of the case, this court is of the view that the recovery of more than commercial quantity of Charas from the possession of the petitioner, confirming the same by the F.S.L. report, would not justify that the petitioner was not involved in



commission of such offence and also there is no material available to substantiate that the petitioner would not commit such offence in the event of release. Therefore, considering the quantum of recovery of Charas as well as the mandate of Section 37, this Court is not inclined to enlarge the petitioner on bail at this stage.

Accordingly, the prayer for grant of bail to the petitioner is rejected.

(Rajesh Kumar Verma, J)

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