

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29271 of 2022

Arising Out of PS. Case No.-16 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Manoj Kumar @ Manoj Gupta Alias Manoj Kumar Gupta Son Of Late
Jagdish Prasad Resident Of Village - Jaitpura, P.S.- Nuaon, Dist.- Kaimur
... .. Petitioner/s

Versus

The Union Of India Through Narcotics Control Bureau, Patna Bihar
... .. Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 45512 of 2022

Arising Out of PS. Case No.-16 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Rohit Kumar S/o Devandra paswan R/o Village- Panhara, P.S.- Naubatpur,
District - Patna.
... .. Petitioner/s

Versus

The Union Of India Through Narcotics Control Bureau Patna Patna
... .. Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 29271 of 2022)

For the Petitioner/s : Mr. Sanjeev Ranjan, Advocate
For the UOI : Mr. K.N. Singh, ASG

Ms. Radhika Raman, CGC
Mr. Manoj Kumar Singh, CGC
Mr. Ankit Kumar Singh

(In CRIMINAL MISCELLANEOUS No. 45512 of 2022)

For the Petitioner/s : Mr. Madhukar Anand

For the Opposite Party/s : Mr. K.N. Singh, ASG
Ms. Radhika Raman, CGC
Mr. Manoj Kumar Singh, CGC
Mr. Ankit Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV ORDER

9 29-04-2023 Heard Mr. Ashutosh Srivastava and Mr. Madhukar

Anand, learned counsel for the petitioners and Dr. K.N. Singh,

learned ASGI assisted by Mr. Manoj Kumar Singh (CGC) and

Mr. Radhika Raman, CGC for Union of India (NCB).

Learned counsel for the petitioners is permitted to

remove the defect(s), as pointed out by the office, if any, within

a period of four weeks from today.

Petitioners seek bail where petitioner, namely, Manoj



Kumar is in custody since 16.11.2021 and the petitioner, namely, Rohit Kumar is in custody since 27.07.2021 in connection with N.D.P.S. Special Case No. 84 of 2021, case dated 20.01.2022 for the offences punishable under Sections 8(c), 21(c), 22(c), 25 and 29 of the N.D.P.S. Act, 1985.

Recovery is of 280 gm of Heroine, 255 gm of Alprazolam and 9 kg of Stone Kala Patthar.

Learned counsel for the petitioners submits that petitioners have falsely been implicated in the present case. He further submits that it appears from the F.I.R. as well as seizure list that 280 gm of Heroine, 255 gm of Alprazolam and 9 kg of Stone Kala Patthar was recovered from the vehicle in question. He further submits apart from the aforesaid, Rs. 4.75 lakhs and one country made pistol with 12 live cartridges were recovered from the Scorpio in question in which co-accused person, namely, Rohit Kumar was riding.

Learned counsel for the petitioners further submits that that there is non-compliance of the Sections 42 and 50 of the N.D.P.S. Act and there is also non-compliance of the “Drug Law Enforcement Field Officer’s Handbook” which mandates the creation of video evidence throughout the entire search and seizure procedure. He further submits that the allegations as



alleged in the F.I.R. is false and fabricated. He further submits that the learned Court below has directed to submit the sample to the Chemical Examiner of CFSL, the Zonal Director of NCB, Patna has sent the sample to the Chemical Examiner of the Central Revenue Control Laboratory. This act of the Zonal Director is absolutely contrary to the direction of the Hon'ble Court and the same act is against the directions of Official Drug Law Enforcement Field Officer's Handbook.

Learned counsel for petitioner, namely, Rohit Kumar, submits that the allegation against the petitioner (Rohit Kumar) is that he was going to receive the alleged contraband from the co-accused, namely, Manoj Kumar and then delivered it to Guddu Kumar and Radha Devi. He further submits that it appears from the seizure list that no contraband is recovered from the possession of the petitioner.

In view of the number of Apex Court judgment that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. He further submits that the police after investigation submitted the charge sheet against the petitioners. The petitioner, namely, Manoj Kumar is in custody since 16.11.2021 and the petitioner, namely, Rohit Kumar is in custody since



27.07.2021.

The learned ASGI, Dr. K.N. Singh, on the basis of material available on record, case diary as well as counter affidavit filed on behalf of the NCB vehemently opposed the prayer for bail of the petitioners and submits that there is duly compliance of the NDPS Act in the present case and the petitioners were examined under Section 67 of the NDPS Act wherein, they themselves reveal the fact in their own hand writing. He further submits that with respect to the F.S.L. report as the seizing officer was in impression that his prayer for permission granted are both for CRCL Dehli. He merely made the said sample sent to CRCL Delhi without any malafide intention or reservation. It is made clear that CFSL Delhi and CRCL Delhi both are central agency working for Government of India. CRCL functions under the Ministry of Finance, Government of India and CFSL functions under the Ministry of Home Affairs, Government of India. Hence, there is no question of willful prompt action while sending the FSL to CRCL Delhi instead of CFSL Delhi. He further submits that the contraband seized in this case was recovered from the vehicle in question wherein, application of Section 50 of NDPS Act is not required. He further submits that the total quantity of Heroine seized was



280 gm and as per Chemical Analysis Report (FSL), the percentage of Heroine in the contraband was 19.18 and the FSL report also confirms that the recovered contraband is *Heroine* and the quantity of the recovered contraband is more than the commercial quantity, so there is embargo under Section 37 of the N.D.P.S. Act. He further submits that the petitioners carries one more case other than the present one.

The grant of bail in NDPS cases where the recovery of commercial quantity of narcotic is alleged is circumscribed under Narcotic Drugs and Psychotropic Substance Act, 1985, Section 37 which says that before grant of bail, the Court must have reason to believe that petitioners have not committed the offence and in the event of release he would not commit similar offence.

The issue was considered by the Hon'ble Supreme Court in the case of **State of Kerala and Ors. Vs. Rajesh and 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** and **Union of India vs. Ajay Kumar Singh @ Pappu** reported in **2023 SCC OnLine SC 3456** dated 28.03.2023.

The recovery of huge quantity of *Heroine* recovered



from the Scorpio in question would not justify that the petitioners had no knowledge of the narcotic nor there is any material to substantiate that the petitioners would not commit such offence in the event of release.

Hence, I am not inclined to enlarge the petitioners on bail in connection with Special Case No. 84 of 2021 pending in the Court of learned Additional Sessions Judge XVIII, Patna.

Prayer is refused.

(Rajesh Kumar Verma, J)

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