

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55466 of 2023

Arising Out of PS. Case No.-40 Year-2022 Thana- PHULWARIA District- Begusarai

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KHURSHID AHAMAD @ WASIM AHMAD S/O MOGEES AHMAD R/O
Village- Nakrahi, P.S- Hanuman Ganj, Distt.- Sultanpur (Uttar Pradesh).

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Gyanendra Kumar Shukla

For the Opposite Party/s : Mr.Nand Kishore Prasad

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

ORAL ORDER

- 3 15-09-2023 1. 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.
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 a case registered under sections 188 and 120B read with 34 the Indian Penal Code and 8, 20 (b) (ii) (C) and 25 of the N.D.P.S. Act.
4. As per the prosecution case, 473.46 kgs of ganja kept in 30 bundles was recovered from the truck and its driver and khalasi are Khurshid Ahmad and one Md. Jawed Ahmad respectively. Both, the driver and the khalasi were sitting in the



truck at the time of recovery of the said *ganja*.

5. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case by the owner of the said vehicle. Nothing has been recovered from the conscious possession of the petitioner. Learned counsel for the petitioner has relied on the judgment of Hon'ble Supreme Court in the case of *Union of India vs. Shiv Shankar Kesari (2007) 7 SCC 798*. The petitioner has clean antecedent as stated in para 3 of the bail petition. The petitioner is in custody since 11.03.2022.

6. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that the said recovery of ganja is a commercial quantity and has recovered from the conscious possession of the petitioner. In this case section 37 of N.D.P.S. Act will apply. It is further submitted that the petitioner is one of the occupants of the said truck as a driver and he was arrested on the spot. The petitioner has full and complete knowledge of the said contraband. It is further submitted that earlier the bail application of this petitioner was rejected by this Court vide order dated 22.09.2022 passed in Cr. Misc. No. 28356 of 2022. Learned APP has further submitted that in the case of *Mohd Muslim @*



Hussain vs. State (NCT of Delhi) the petitioner remained in custody for over 7 years whereas this petitioner remained in custody only for about 1 and a half year. There is no prolonged incarceration. He has further submitted that the authority of the Hon'ble Supreme Court cited by the learned counsel for the petitioner does not support his contention.

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. This 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.”

7. Considering the aforesaid facts and circumstances, of the case as well as the recovery of commercial quantity of ganja i.e. 473.46 kgs from the conscious possession of the petitioner, I am not inclined to enlarge this petitioner above-named on bail.

8. Learned Trial Court is further directed to expedite the trial and conclude the same preferably within 9 months.

9. The bail petition stands rejected.

(Chandra Prakash Singh, J)

Alok Verma/-

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