

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48554 of 2023

Arising Out of PS. Case No.-164 Year-2022 Thana- RAXAUL District- East ChamPara-n

Balashova Anna Daughter of Shri Vladimir Anatolievich R/O-Moscow
Deroev Panfilovcev, 16-2-60, Russia

... .. Petitioner/s

Versus

1. The State of Bihar
2. The AFRRO, ICP Raxaul, Bureau of Immigration, ICP, Raxaul Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 55169 of 2023

Arising Out of PS. Case No.-164 Year-2022 Thana- RAXAUL District- East ChamPara-n

Zherdev Ilia S/O Shri Vladimir R/O 38 Keramzavoda, St. 390007 Ryazan
Rusia. (Passport No. 662612041)

... .. Petitioner/s

Versus

1. The State of Bihar
2. The AFRRO, ICP Raxaul, Bureau of Immigration, ICP, Raxaul Raxaul

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 55250 of 2023

Arising Out of PS. Case No.-164 Year-2022 Thana- RAXAUL District- East ChamPara-n

Roludugin Alexey @ Rodugin Alexey @ Roldugin Alexey S/O Shri Anatoliy
R/O Nakhimova 15, Maposad, Russia

... .. Petitioner/s

Versus

1. The State of Bihar
2. The AFRRO, ICP Raxaul, Bureau of Immigration, ICP, Raxaul Raxaul

... .. Opposite Party/s



Appearance :

(In CRIMINAL MISCELLANEOUS No. 48554 of 2023)

For the Petitioner/s : Mr. R.P. Luthra, Advocate
Mr. Saket Tiwary, Advocate
For the Opposite Party/s : Mr. Bharat Bhushan, App, 156
For the Union of India : Mr. Ramakant Sharma, Sr. Advocate
Mr. Ankit Kumar Singh, Advocate
: Mr. Akshay Ashish, Advocate

(In CRIMINAL MISCELLANEOUS No. 55169 of 2023)

For the Petitioner/s : Mr. R.P. Luthra, Advocate
Mr. Saket Tiwary, Advocate
For the Opposite Party/s : Mr. Bharat Bhushan, App, 156
For the Union of India : Mr. Ramakant Sharma, Sr. Advocate
Mr. Ankit Kumar Singh, Advocate
: Mr. Akshay Ashish, Advocate

(In CRIMINAL MISCELLANEOUS No. 55250 of 2023)

For the Petitioner/s : Mr. R.P. Luthra, Advocate
Mr. Saket Tiwary, Advocate
For the Opposite Party/s : Mr. Bharat Bhushan, App, 156
For the Union of India : Mr. Ramakant Sharma, Sr. Advocate
Mr. Ankit Kumar Singh, Advocate
: Mr. Akshay Ashish, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

8 22-09-2023 Heard learned counsel, Mr. R.P. Luthra, assisted by Mr. Saket Tiwary appearing on behalf of the petitioners, learned Central Government Counsel, Mr. Ramakant Sharma, assisted by Mr. Ankit Kumar Singh and Mr. Akshay Ashish appearing on behalf of Union of India and learned APP, Mr. Bharat Bhushan appearing on behalf of the State.

2. The petitioners seek bail in connection with N.D.P.S. Case No. 26 of 2022 arising out of Raxaul, Haraiya (O.P.) P.S. Case No. 164 of 2022 registered for the offence under Section 14(b) of Foreigners Act, 1946 and Sections



20(b)II(c) and 23(c) of the N.D.P.S. Act.

3. All the accused/petitioners are named in the F.I.R. and are in custody since 03.04.2022.

4. The allegation against all the above named petitioners, who are Russian citizens, is to have in possession of total 6.380 Kg of contraband i.e., '*Charas*', out of which 3 Kg was recovered from accused/petitioner no.1, 2 Kg was recovered from accused/petitioner no.2 and 1.250 Kg was recovered from accused/petitioner no.3, while crossing Indo-Nepal border, having further allegation to remain in India after expiring their visas.

5. At the outset, it is important to mention that these petitions are second bail petitions of above named petitioners, whereas, their first bail petitions, after considering all available merits and legal positions, have already been rejected by this Court through Cr. Misc. No. 52883 of 2022 dated 22.11.2022.

6. Learned counsel Mr. R.P. Luthra, while appearing on behalf of the petitioners submitted that occasion to press present second bail petitions arises out of submission of supplementary charge-sheet, where analysis of CCTV footage is available. In this connections, he pointed out Para- 60 of supplementary charge-sheet no. 75/2023 dated 21.03.2023 that



petitioners were present till 2:03 PM on 02.04.2022, within the premises of M/s Shyama International Hotel, Raxaul and were under custody of immigration officers and thereafter, they went together in a car for immigration office, Raxaul, alongwith immigration officials. It is pointed out by learned counsel that the petitioners were remain in custody with Narcotics Department since 31.03.2022 to 02.04.2022 but nothing appears during investigation to suggest that alleged contraband was seized either from persons or hotel rooms occupied by petitioners, during said period. It is pointed out that the several mandatory provisions regarding search and seizures as available under N.D.P.S., Act were not complied with, coupled with the provisions of Code of Criminal Procedure (Cr.P.C.), which is mandatory in terms of Section 100(4) of the Cr.P.C. It is submitted that present false case was lodged only, when petitioners did not succumb before immigration officials for fulfillment of their illegal gratification. It is pointed out by learned counsel that the Para- 9 of the counter affidavit clearly suggests the biased and planned implications, where it appears from Para- 9 of the counter affidavit dated 14.09.2023 as filed by respondent no. 2, namely, The AFRRO, ICP Raxaul that petitioners arrived at hotel on 31.03.2022 at 7:35 AM with a bag



containing '*Charas*' and if it was so then what was the circumstances that despite all surveillance petitioners were not arrested till 02.04.2022 despite having knowledge regarding contraband. Admittedly, petitioners were arrested after check-out from M/s Shyama International Hotel, Raxaul on 02.04.2022 at 2:03 PM as per CCTV footage, and as such, non-arresting of petitioners between 31.03.2022 till 02.04.2022, despite having knowledge that '*charas*' was brought in hotel by petitioners at 7:35 PM on 31.03.2022 as alleged, in itself sufficient to suggest that entire implication is false, formulated and out of non-fulfillment of illegal gratification. Learned counsel further pointed out that the mandatory compliance of Section 50 of N.D.P.S. Act was also not followed in present case. While concluding the argument, learned counsel submitted that petitioner no. 1, namely Balashova Anna is a lady of clean antecedent and moreover, investigation of this case now completed, for which charge-sheet has already submitted and such there is no chances of tempering with the evidences.

7. At the outset, it is pointed out by learned senior counsel Mr. Ramakant Sharma appearing on behalf of the O.P. No. 2 that the Para- 9 of the counter affidavit dated 14.09.2023, as submitted above be ignored as it appears typing error. It is



also pointed out that at no point of time as alleged petitioners were taken into custody by respondent no. 2. It is submitted that the petitioners are members of international drug rackets and it appears during the course of investigation that petitioner no. 3, Roludugin Alexey visited earlier on two different occasions to Raxaul i.e. Indo-Nepal border. Learned senior counsel further submitted that the area is very sensitive for such illegal drug activities and as such to keep a strict vigil on foreign national/tourists, who visited this area, officers of AFRRO generally stay in such hotel, whenever, it has been informed that foreign nationals are residing and that is desirable for their security purposes also. It is submitted by learned senior counsel that the CCTV footage, as submitted above clearly indicates that petitioners check-out hotels on 02.04.2022 at 2:03 PM and when they were in process to cross Nepal border were brought to immigration office as the officers were aware since 31.03.2023 that petitioners are in process to extend their visas, where during the process of inquiry they have been found in possession of 'charas' and thereafter, the matter was reported to local police, who after completing required legal formalities lodged the present F.I.R.

8. Learned APP, in addition to the submissions, which



were raised while disposing the first bail petition of all above named three petitioners i.e. Cr. Misc. No. 52883 of 2022 dated 22.11.2022 submitted that charge has already framed in this case against all petitioners and trial is under progress, where out of seven prosecution witnesses two had already examined and there is all probability that trial may conclude within next few months. It is further submitted by learned APP that it would be difficult to secure the presence of petitioners during the trial if enlarged on bail at this point of time for the reason that they are foreign nationals. While concluding the argument, learned APP submitted that there is recovery of commercial quantity of '*Charas*' from each of petitioners, attracting rigorous provisions of Section 37 of N.D.P.S. Act, which not even provide a space for liberal consideration on the ground being a "lady".

9. In view of the facts and circumstances, as mentioned above, as the prayer of above named three petitioners have already rejected by speaking order of this Court through Cr. Misc. No. 52883 of 2022 dated 22.11.2022 dealing all available merits coupled with the fact that trial is likely to conclude in near future, where out of seven prosecution witnesses two have already examined, this Court is not inclined to enlarge petitioners on bail.



10. Accordingly, the prayer of bail of above named three petitioners is rejected herewith, on second consideration also.

(Chandra Shekhar Jha, J)

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