

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50845 of 2023

Arising Out of PS. Case No.-246 Year-2023 Thana- MAJHAULIA District- West Champaran

Ampu Kumar Son Of Sri Birendra Ram R/O-Biraith, P.S.-GOPALPUR,
Distt.-WEST Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Abhishek Kumar, Advocate

For the Opposite Party/s : Mr. Umanath Mishra, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

4 27-09-2023 Heard learned counsel for the petitioner learned APP
for the State.

2. Petitioner seeks bail who is in custody since 02.04.2023 in connection with Majhauria P.S. FIR No. 246 of 2023 for the offences punishable under Sections 399, 402 of the Indian Penal Code, Sections 25(1-B)(a)/26/35 of the Arms Act and Sections 8/20 of the N.D.P.S. Act.

3. The case relates to recovery of one loaded country made pistol with one live cartridge and 02 Kg. of *Charas*.

4. Learned counsel for the petitioner submits that the petitioner is innocent and he has falsely been implicated in the present case. He further submits that from perusal of the F.I.R. as well as seizure list that nothing has been recovered from the conscious possession of the petitioner and as per allegation in



the F.I.R. the petitioner fled away from the place of occurrence and one loaded country made pistol, one live cartridge and 02 Kg. of Charas have been recovered from the possession of co-accused person namely Saif Ali and he suggests that the petitioner was also accompanied with him and he fled away from the place of occurrence. The petitioner is in custody since 02.04.2023.

5. Learned Additional Public Prosecutor, on the other hand, on the basis of material available on record as well as case diary, vehemently opposed the prayer for bail of the petitioner and submits that it appears from the statement of co-accused person that the petitioner was also accompanied with him and the petitioner fled away from the place of occurrence. He further submits that there is a recovery of 02 Kg. of Charas which is more than the commercial quantity, so there is embargo under Section 37 of the N.D.P.S. Act and apart from the aforesaid, the petitioner carries three more cases other than the present one.

6. 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 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 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.

8. The recovery of huge quantity of *Charas* recovered from the possession of co-accused and the petitioner was also accompanied with him fled away from the place of occurrence 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. Hence, I am not inclined to enlarge the petitioner on bail in connection with Majhaulia P.S. FIR No. 246 of 2023, pending in the Court of learned Sessions Judge-cum-Special Judge, under NDPS Act, West Champaran at Bettiah.

10. Prayer is refused.

(Rajesh Kumar Verma, J)

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