

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51123 of 2022

Arising Out of PS. Case No.-27 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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JAGDISH RAY Son of Ram Pratap Ray R/V- Judavanpur Barari, P.S-
Raghopur, Dist- Vaishali

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Union of India New Delhi

... .. Opposite Party/s

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with
CRIMINAL MISCELLANEOUS No. 71545 of 2022

Arising Out of PS. Case No.-27 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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ADALAT RAI Son of Late Jawahar Rai R/V- Rasulpur Habib, P.S-
Chandpura, Dist- Vaishali

... .. Petitioner/s

Versus

The Union of India through NCB, Patna Bihar

... .. Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 51123 of 2022)

For the Petitioner/s	:	Mr. Rajiv Prashant, Adv.
For the UOI	:	Mr. Tarkeshwar Nath Thakur, CGC
For the State	:	Mr. Ram Naresh Ray, APP

(In CRIMINAL MISCELLANEOUS No. 71545 of 2022)

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Sr. Adv.
		Mr. Vaishnavi Singh
For the UOI (NCB)	:	Mr. Ram Anurag Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

5 23-02-2023 Heard learned counsel for the petitioners and the

learned A.P.P. for the State as well as learned counsel

representing the Union of India (NCB).

The petitioners seek bail in a case registered for the



offence under Sections 8(C) read with 20(b)(ii)(C), 25 and 29 of the NDPS Act.

According to the F.I.R., 311.600 Kgs. of Ganja has been recovered from the truck in question.

Learned counsel for the petitioners submits that the petitioners are innocent and have not committed any offence. In fact, according to the F.I.R., 311.600 Kgs. of Ganja is said to have been recovered from the truck in question and two persons have been apprehended from the spot who disclosed the names of the petitioners. It is further submitted that nothing incriminating has been recovered from the conscious possession of the petitioners and they have no concern with the alleged recovery of Ganja. It is further contended that these petitioners have been made accused in this case on the basis of previous enmity between the apprehended persons and the petitioners. It has also been submitted that neither the petitioners happen to be driver nor they happen to be the owner of the alleged truck and they are not involved in illegal dealing of Ganja in any way nor they have got knowledge about the presence of Ganja in the truck. He further submits that the petitioners are rotting in judicial custody since 27.04.2022 and 07.04.2022, respectively.

Learned counsel appearing for Union of India and the learned A.P.P. for the State, vehemently, opposed the prayer for bail of these petitioners and submitted that a huge quantity to



the extent of 311.600 Kgs. of Ganja falling within the purview of commercial quantity has been recovered from the truck in question and the F.S.L. report also confirms that the recovered article is Ganja. It has also been submitted that since the recovered quantity comes under the purview of commercial quantity, the petitioners seem to be engaged in dealing with the contraband substance like Ganja. Hence, the petitioners do not deserve to be enlarged on bail.

Since the quantum of recovery of Ganja in this case falls within the purview of commercial quantity, which is defined as 20 Kg., the stringent provision of Section 37 of the N.D.P.S. Act, 1985 shall come into play 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 Ganja from the truck, confirming the same by the F.S.L. report, would not justify that the petitioners were not involved in commission of such offence and also there is no material available to substantiate that the petitioners would not commit such offence in the event of release. Therefore, considering the quantum of recovery of Ganja as well as the mandate of Section 37, this Court is not inclined to enlarge the petitioners on bail at this stage. Accordingly, the prayer for grant of bail to the petitioners is rejected.

However, learned trial court is directed to expedite the trial.

(Rajesh Kumar Verma, J)

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