

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55819 of 2022

Arising Out of PS. Case No.-13 Year-2022 Thana- GAYA RAIL P.S. District- Gaya

Anjani Pandey, Son of Late Narvadeshwar Pandey, R/O Village- Gaurakshni,
Ward No. 5, Near Scottish School, P.S.- Sasaram, Dist.- Rohtas, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sumit Shekhar Pandey, Advocate

For the Opposite Party/s : Mr. Satya Nand Shukla, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 16-02-2023 Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, if any, within a period of four weeks from today.

Heard Mr. Sumit Shekhar Pandey, learned counsel appearing on behalf of the petitioner and the learned APP for the State.

The petitioner seeks regular bail, who is in custody in connection with Gaya Rail P.S. Case No. 13 of 2022 registered for the offences punishable under Sections 8 /20 (b) (ii) (c) of the N.D.P.S. Act.

Allegedly, the police in course of patrolling on suspicion, apprehended two persons and on search from the bag carrying by the petitioner, 10 kg Ganja was recovered. It is also alleged that another person was also apprehended by police,



from whose possession total 15.90 Kg Ganja was recovered.

Learned counsel appearing on behalf of the petitioner submits that from the FIR and the materials available on record, it is evident that there is no compliance of Section 50 of the N.D.P.S. Act, apart from the fact that all the seizure list witnesses are police personnels and, as such, defiance of Section 100 of the Cr.P.C. He further submits that since the alleged recovery is below the commercial quantity and, as such, the rigors provided under Section 37 of the N.D.P.S. Act would not be applicable in this case, apart from the fact that another co-accused, who was also apprehended at the same time carrying 15.90 Kg Ganja, has been allowed the privilege of bail by the learned co-ordinate Bench of this Court in Cr. Misc. No. 25215 of 2022, the copy of which has been taken on record. He next submits that the investigation is also vitiated for the fact that charge-sheet has been submitted without obtaining the FSL report, as to whether the alleged recovered contraband is Ganja or any other substance. He lastly submitted that the petitioner, having fair antecedent and in custody over a period of more than a year.

On the other hand, learned APP for the State vehemently opposes the bail application and submits that the



recovery has been made from the conscious possession of the petitioner and from the FIR it appears that the petitioner was indulged in trafficking of contraband.

Regard being had to the submissions made on behalf of the parties and considering the fact that the recovered contraband is below the commercial quantity and, as such, the rigors provided under Section 37 of the N.D.P.S. Act is not applicable, apart from other irregularities in the preparation of search and seizure and coupled with the fair antecedent of the period and custody, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge - III, Gaya, Bihar in connection with Gaya Rail P.S. Case No. 13 of 2022, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-

(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or



intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(Harish Kumar, J)

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