

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53381 of 2022

Arising Out of PS. Case No.-12 Year-2022 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

Chandan Kumar Son of Mr. Jangli Rai R/V- Chand Chaura Kurmi tola Ward
No. 6, P.S- Ujiarpur, Dist- Samastipur

... .. Petitioner/s

Versus

Union of India Through Customs (Preventive), Patna Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mrs. Vaishnavi Singh, Advocate
For the Custom : Mr. Mr. Anshuman Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV ORDER

8 11-04-2023 Heard Mrs. Vaishnavi Singh, learned counsel
appearing on behalf of the petitioner and Mr. Anshuman Singh,
learned counsel appearing on behalf of the Custom.

Petitioner seeks bail, who is in custody since
05.02.2022, in connection with N.D.P.S. Case No. 31 of 2022
arising out of Unit Case No. 12 of 2021-22 dated 18.01.2022
registered for the offences punishable under Sections 20, 29 of
the Narcotic Drugs and Psychotropic Substances Act, 1985.

Recovery is of 90 Kilograms of *Ganja*.

Learned counsel for the petitioner submits that the
petitioner is innocent and he been falsely implicated in the
present case on the basis of the seizure report and Panchanama.
He further submits that the alleged contraband (90 Kilograms of
Ganja like substance) was recovered from SLR No. 195614 of



Train No. 15909 on the basis of the specific information. Learned counsel for the petitioner further submits that the petitioner was not apprehended with the contraband articles and he has no concern at all with the seized contraband articles or the present case.

The Investigating Agency (Custom) with some ulterior motive has been falsely implicated the petitioner in the present case and there is no compliance of Section 42 of the NDPS Act and it has been alleged in the report that the consignor of the said parcel was the petitioner (Chandan Kumar) and the Aadhar card of the petitioner was being used for booking the said parcel under the guise of motor parts from one fake invoice of R&D Enterprises. The petitioner was surrendered before the Custom Officials on 04.04.2022 and he was taken into custody and his statement was recorded under Section 67 of the NDPS Act and he has stated in his statement that one Hariram Mahto had used his Aadhar card for other purpose.

Learned counsel appearing on behalf of the Union of India (Custom) has vehemently opposed the prayer for bail of the petitioner and submits that the Laboratory Test Report of the said contraband confirmed that on the basis of microscopic,



chemical and chromatographic examinations, the sample answers positive test for *Ganja*. The Commercial Supervisor-I, NJP Railway Station who booked the seized consignment on 17.01.2022 was summoned to appear before the Superintendent (Preventive), Customs (P) Headquarters, Patna on 07.03.2022 for an enquiry in connection with seizure of 90 Kilograms of *Ganja*. The Commercial Supervisor-I, NJP Railway Station appeared and his statement was recorded under Section 67 of the NDPS Act, 1985 in which he had stated that he was posted at New Jalpaiguri Railway Station since 2012 and he also accepted that he was booked the consignment in question from Chandan Kumar (petitioner). He further stated that the petitioner was the applicant and he was present at the time of booking. He also verified the face of Chandan Kumar with the photo printed on Aadhar Card at the time of booking. Further submits that the present accusation is based circumstantial evidences i.e. documents submitted by Chief Parcel Officer, NJP, statement recorded by the petitioner and the statement recorded by the Commercial Supervisor-I, NJP Railway Station. Further submits that there is due compliance of Section 42 of the NDPS ACT, 1985 has been followed in the present case. He further submits that the petitioner carries three more cases other



than the present one in which one case is of similar nature and the other two cases are of different natures.

Lastly, learned counsel appearing on behalf of Union of India (Custom) relied upon a judgment of Hon'ble Supreme Court passed in SLP (CRL) No. 2351 of 2023 (Union of India Vs. Ajay Kumar Singh @ Pappu) dated 28.03.2023 in which the Hon'ble Apex Court had reiterated in paragraph nos. 14, 15, 16 and 17 of the said judgement which reads as follows:-

“14. This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight of Section 37 of the NDPS Act, which, inter alia, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely, (i) the public prosecutor has been given an opportunity to oppose the bail application; and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail.

15. For the sake of convenience Section 37(1) is reproduced hereinbelow:-

“37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-



(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.'

16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

17. The quantity of "ganja" recovered is admittedly of commercial quantity. The High court has not recorded any finding that the respondent-accused is not prima facie guilty of the offence alleged and that he is not likely to commit the



same offence when enlarged on bail rather his antecedents are indicative that he is a regular offender. In the absence of recording of such satisfaction by the court, we are of the opinion that the High Court manifestly erred in enlarging the respondent-accused on bail.”

The grant of bail in NDPS cases where the recovery of commercial quantity of narcotic is alleged is circumscribed under Narcotic Drugs and Psychotropic Substances 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.

The recovery of huge quantity of Ganja recovered from SLR No. 195614 of Train No. 15909 on the basis of booked consignment in question which was booked by the petitioner 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.

Hence, I am not inclined to enlarge the petitioner on bail in connection with N.D.P.S. Case No. 31 of 2022 arising out of Unit Case No. 12 of 2021-2022 pending in the Court of



learned Special Judge NDPS , Patna.

Prayer is refused.

(Rajesh Kumar Verma, J)

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