

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64145 of 2021

Arising Out of PS. Case No.-6 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Aurangabad

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Rakesh Kumar S/o Deomuni Singh Resident of Village - Amethi, P.S. -
Sanjhauli, District - Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Union of India through the I.O. NCB, Bihar, Patna. Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate
		Mr. Dhaneshwar Prasad Gupta, Advocate
For the Opposite Party/s	:	Ms. Nirmala Kumari, APP
For the UOI	:	Ms. Shail Kumari, CGC

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV ORDER

23 04-05-2023 Heard learned counsel for the petitioner, learned
Central Government Counsel and learned APP for the State.

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.

Petitioner seeks bail who is in custody since
09.03.2021 in connection with NCB Case No. 06 of 2021 for the
offences punishable under Sections 20(b) (ii), 25 and 29 of the
N.D.P.S. Act.

Recovery is of 1031.300 kg of Ganja.

Learned counsel for the petitioner submits that
petitioner has clean antecedent and he has falsely been



implicated in the present case. He further submits that it appears from the F.I.R. as well as seizure list that nothing has been recovered from the conscious possession of the petitioner rather the recovery has been made from the truck in question and the said truck does not belong to the petitioner. He further submits that the owner of the truck in question is Dayanand Kumar. He further submits that the name of the petitioner has been transpired in this case on the basis of the confessional statement of the co-accused persons, namely, Girdhari Pandey (driver) and Rajendra Ram (co-driver) who have been arrested along with the Ganja. He further submits that the petitioner is not involved in the trafficking of narcotics and the entire allegation against the petitioner is false and fabricated.

Learned counsel for the Union of India on the other hand submits that the co-accused person, namely, Rajendra Ram Girivardhari Pandey disclosed that the receivers of the Ganja are Sadhu Yadav and Dharmaraj @ Dhanraj Yadav @ Juna. He further disclosed that Rakesh Kumar and Krishnakant are also the associates of Sadhu Yadav and Dharamraj Yadav. He further submits that Girivardhari Pandey and Rajendra Ram recognized the petitioner as Rakesh Kumar and the voluntary statement of the petitioner was recorded on 07.03.2021 and 08.03.2021 and



the petitioner admitted his involvement in trafficking of 1031.300 kg of Ganja. He also disclosed that the vehicle in question is of accused Dharmaraj Singh @ Juna. He further submits that the confessional statement of the petitioner was confirmed in the CDR and from perusal of the CDR of mobile no. 7870054146 of the petitioner, it transpires that he was in regular contact with Kamlesh Kumar @ Sadhu (mobile no. 8709387773 and 8280891569), seized Ganja supplier Jakub Majhi (mobile no. 7735761415), arrested truck driver Rajendra Ram (mobile no. 7751894551) and Krishnakant Singh (mobile no. 7368035999). He further submits that it has come during investigation that the mobile no. 7870054146 belongs to the petitioner and the petitioner is the associate of accused Kamlesh Kumar and Dharmaraj Singh. He further submits that the recovered contraband (Ganja) is 1031.300 kg which is 52 times more than the commercial quantity. He further submits that the bail application of the co-accused person, namely, Krishnakant @ Krishnakant Singh has been rejected by the Co-ordinate Bench of this Court vide order dated 21.04.2022 passed in Cr. Misc. No. 68431 of 2021 and the bail application of another co-accused, namely, Girwardhari Pandey @ Girwardhari Pandey has been rejected by the Co-ordinate Bench of this Court vide



order dated 29.08.2022 passed in Cr. Misc. No. 4348 of 2022. He further submits that the confessional statement of the petitioner and other accused persons reveals the involvement of the petitioner in trafficking of seized 1031.300 kg of Ganja.

In this case, the proper analysis of CDR shows that the petitioner was in regular contact with the co-accused persons and the petitioner is a member of the racket for trafficking of narcotics and the recovered contraband is *Ganja* and the quantity of the recovered contraband is more than the commercial quantity, so there is embargo under Section 37 of the N.D.P.S. Act.

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 petitioners have not committed the offence and in the event of release he would not commit similar offence.

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.

The recovery of huge quantity of Ganja recovered 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 NCB Case No. 06 of 2021 pending in the Court of learned 1st Additional District & Sessions Judge cum Special Judge (NDPS), Aurangabad.

Prayer is refused.

(Rajesh Kumar Verma, J)

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