

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 71510 of 2021**

Arising Out of PS. Case No.-16 Year-2019 Thana- D.R.I District- Patna

ROHITASH SINGH Son of Late Karni Singh Resident of Village- Ready
Bhurawas, Police Station - Shawa, District - Churu, State - Rajasthan.

... .. Petitioner/s

Versus

THE UNION OF INDIA THROUGH DIRECTORATE OF REVENUE
INTELLIGENCE RU, PATNA Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr Sanjeev Ranjan, Advocate
For the Opposite Party/s : Mr Ranvir Kumar, Sr SC

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

9 **11-01-2023** Heard learned counsel for the petitioner and learned
counsel for the Union of India.

The petitioner seeks bail in Special Case No 168 of
2019 registered for the offence punishable under Sections 8 (c),
20 and 25 of Narcotic Drugs & Psychotropic Substances (for
brevity, **NDPS**) Act, 1985.

There is alleged recovery of 833.800 kilograms of
Ganja from the truck.

Learned counsel for the petitioner submits that the
petitioner was a Driver performing his professional duties
oblivious of the fact that any **Ganja** has been kept in the truck.
He submits that the petitioner was under the impression that he
was carrying empty glass bottles. Referring to the report of



chemical laboratory (Annexure A1 to the second counter affidavit), he submits that there is no positive findings of the substance which was recovered, being contraband.

Learned counsel for the Union of India, however, opposed the prayer for bail. It is submitted that huge quantity of contraband has been recovered, much more than commercial quantity. The Chemical Laboratory Report clearly states that each of the three samples has the characteristic of “*Ganja*”. The petitioner, by now, has been in custody since 26.11.2019.

The petitioner, as per the case, has been found to be in possession of the contraband goods as he was driving the truck in question. The defence of the petitioner denying knowledge of the contents and other submissions are submissions, which undoubtedly are required to be considered at the appropriate stage at the trial.

Considering the rival submission, this Court would consider the judgment of the Apex Court in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners -Versus- Union of India & Another***, reported in (1994) 6 ***Supreme Court Cases 731*** wherein the Apex Court has laid down the law with respect to grant of bail in the case of recovery of contraband substance, above commercial quantity.



Relevant extract of judgment in the case of *Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra)* is being reproduced:

“We were told by the learned counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases. We, therefore, direct as under:

- (i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.*
- (ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.*
- (iii) Where the undertrial accused is charged*



with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.

Directions issued in the case of *Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra)* was made applicable to the State of Bihar and some other States by subsequent order passed in the same case which has been reported in *(1995) 4 Supreme Court Cases 695*.

The minimum punishment provided in respect of allegations against the petitioner is ten years.

Keeping the said law in the background, this Court is not inclined to grant bail to the petitioner in view of the custody of the petitioner, slightly above three years.

Prayer for bail is rejected.

(Madhuresh Prasad, J)

M.E.H./-

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