

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66613 of 2022**

Arising Out of PS. Case No.-1 Year-2021 Thana- THAWE District- Gopalganj

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ASHIF KHAN @ SADDAM HUSSAIN @ ASIF KHAN S/O Shafi Khan @
Safi Ahmad R/O Village- Bairam Indrawan, P.S- Nagar Gopalganj, District-
Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Lokesh Kumar Singh, Adv.

For the Opposite Party/s : Mr.Nirmala Kumari, APP

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**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER**

3 06-04-2023 Heard learned counsel for the petitioner and the
learned A.P.P. for the State.

The petitioner seek bail in connection with Trial No. 02
of 2021 arising out of Thawe P.S. Case No. 01 of 2021 dated
01.01.2021 registered for the offence under Sections 8/20(b)(ii)
(a) of the NDPS Act.

According to the F.I.R., 1.200 Kgs. of Ganja has been
recovered from the vehicle in question.

Learned counsel for the petitioner submits that the
petitioner is innocent and has not committed any offence. He
further submits that in fact, according to the F.I.R., 1.200 Kgs. of
Ganja is said to have been recovered from the Dezire Car in
question and the petitioner is stated to have been present on the
front seat of the car along with others. It is further been



submitted that nothing incriminating has been recovered from the conscious possession of the petitioner and he has no concern with the alleged recovery of Ganja. It has also been submitted that neither the petitioner happen to be driver nor they happen to be the owner of the alleged vehicle and he is not involved in illegal dealing of Ganja in any way nor he was aware about presence of Ganja in the vehicle in question. He further submits that the petitioner are rotting in judicial custody since 02.01.2021.

Learned A.P.P. for the State, vehemently, opposed the prayer for bail of the petitioner and submitted that though the alleged recovery is stated to be Ganja but the F.S.L. report confirms that the recovered article is a derivative of heroine (Diacetylmorphine).

F.S.L. report is being quoted hereinbelow;

Result of Examination.

“BRUCINE’, ‘MORPHINE’, and 6-MONOACETYL MORPHINE were detected in the content of the tin dibba kept in plastic dibba as describe above.

MORPHINE and 6-MONOACETYL MORPHINE are opium derivative narcotic drugs while ‘BRUCINE’ is a plant alkaloid.”

Learned A.P.P. for the State further submitted that according the notification, small quantity is prescribed as 5 gram and the commercial quantity is 250 gram. Here in the case at hands altogether 1.200 Kgs. has been recovered, as such, the



recovered quantity comes under the purview of commercial quantity, therefore, 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. He further submits that the petitioner seems to be engaged in dealing with the contraband substance like Heroine (Diacetylmorphine). Hence, the petitioner do not deserve to be enlarged 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 heroine (Diacetylmorphine) from the vehicle in question, confirming the same by the F.S.L. report, would not justify that the petitioner was not involved in commission of such offence and also there is no material available to substantiate that the petitioner would not commit such offence in the event of release. Therefore, considering the quantum of recovery of heroine (Diacetylmorphine) as well as the mandate of Section 37, this Court is not inclined to enlarge



the petitioner 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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