

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 71364 of 2023

Arising Out of PS. Case No.-3 Year-2019 Thana- DHANGAI District- Gaya

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1. Sanjay Yadav Son Of Lalji Yadav Resident Of Village Dhanawan, Ps Barachatti, Dist - Gaya.
 2. Kishun Yadav Son Of Late Dukhi Yadav R/O Vill - Bumer, P.S. - Barachatti, Distt. - Gaya.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kr. Sinha, Advocate

For the Opposite Party/s : Mr. Ganesh Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 07-11-2023 Heard Mr. Sanjay Kr. Sinha, learned counsel

appearing on behalf of the petitioners and Mr. Ganesh Prasad

Singh, learned APP for the State.

2. The petitioners seek pre-arrest bail in connection
with Dhangai P.S. Case No.03 of 2019 dated 06.03.2019
registered for the offence punishable under Sections
08/15/18(c)/25 of the NDPS Act.

3. Prosecution story, in brief, is that as per the written
report of the informant S.I. Vidya Sharan Sah on 05.03.2019, a
team was constituted for the destruction of cultivated opium
plant at village- Barsudi. It is further alleged that informant got
information that accused/petitioners along with other co-accused

persons, who belong to another place, were suspected to be engaged in illegal cultivation of opium. On this information, the police party reached at village- Barsudi and destroyed 08 acres of illegal cultivation of opium over different plots. A sample of opium plant was recovered and seizure list was prepared accordingly.

4. Learned counsel appearing on behalf of the petitioners submits that the alleged place of occurrence, where the opium plant were cultivated, is in the forest area. The petitioner belongs to Barachatti and the place of occurrence is Barsudi, which is located in another police station and the same is in forest area. The forest area is heavily guarded by the forest officers. But since the illegal cultivation of poppy came to the knowledge of general-public, the petitioner, who is from another village, was made accused merely on the basis of suspicion in the present case by the informant. The informant is a police officer and he has not named any forest officials, after being informed that the poppy plants were being cultivated in the forest area, as it appears from the FIR. Petitioners have clean antecedent.

5. Learned APP for the State has vehemently opposed the prayer for grant of pre-arrest bail, however, he admits that

the forest officials has not been named in the FIR.

6. Considering the rival submissions made by the parties, as well as, the allegations made in the FIR, which is on the basis of secret information gathered by the informant, who is a police officer, it has not been disclosed in the FIR whether such information was given to the informant by any of the forest officer, rather it appears that without obtaining the direction of the concerned competent authority, steps were taken by the police. Suspicion has been raised against the petitioners' involvement in the alleged offence of cultivation of poppy plants in the forest area.

7. Considering the fact that no recovery has been made from the house of the petitioner and the petitioner has been made accused in the present case on the basis of suspicion, the law is well settled in this regard that a strong suspicion, howsoever, cannot take the place of proof and for suspicion and under-trial cannot be kept behind the bar, even after completion of investigation. Also, the petitioners have clean antecedent. I am of the opinion that petitioners have, prima facie, made out a case to be released on **provisional bail** subject to final outcome of the investigation.

8. The petitioners, above named, are directed to be

released on **provisional bail**, in the event of their arrest or surrender before the Court below within a period of four weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) each with two sureties of the like amount each to the satisfaction of learned Sessions Judge, Gaya in connection with Dhangai P.S. Case No.03 of 2019 dated 06.03.2019, subject to the condition as laid down under Section 438(2) of the Cr.P.C. after being satisfied on the basis of final outcome of investigation, and if in the investigation no material collected against the petitioners then the petitioners' bail bond is directed to be made absolute, on such terms and conditions, as deemed proper by the Special Court.

9. The Court below is directed to verify the criminal antecedent of the petitioner as stated in paragraph no. 3 of the bail application. If any other case is pending against the petitioner as what has been stated in paragraph no. 3, this order will lose its force automatically.

(Purnendu Singh, J.)

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