

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73926 of 2022

Arising Out of PS. Case No.-634 Year-2021 Thana- SAKRA District- Muzaffarpur

Kamlesh Kumar Son of Late Upendra Mahto R/v- Ladaura Chowk, P.S.-
Kalyanpur, District- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Surendra Kumar Mishra

For the Opposite Party/s : Mr.Jai Narain Thakur

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 22-06-2023 Heard learned counsel for the petitioner learned APP
for the State.

Petitioner seeks bail who is in custody since
01.01.2022 in connection with N.D.P.S. Case No. 23 of 2022
arising out of Sakra P.S. Case No. 634 of 2021 for the offences
punishable under Sections 399, 402/34 of the Indian Penal
Code, Sections 25 (1-b)a/26/35 of the Arms Act and Section
8/20/22 of the N.D.P.S. Act.

The case relates to recovery of 01 Kg. of Charas, one
Vivo Mobile Phone, one country made pistol with one live
cartridge and a Honda Motorcycle.

Learned counsel for the petitioner submits that
petitioner is innocent 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 01 Kg. of Charas, one Vivo Mobile Phone, one country made pistol along with one live cartridge and Honda Motorcycle were recovered from the possession of the petitioner. He further submits that there is non compliance of Section 42 and 50 of the N.D.P.S. Act and without FSL report the prosecution has mentioned in the F.I.R. that Charas has been recovered from the possession of the petitioner.

Learned Additional Public Prosecutor on the other hand vehemently opposed the prayer for bail of the petitioner and submits that the F.S.L. report confirms that the recovered contraband is Charas and apart from that the petitioner has carried five more cases and 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 petitioner has 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 Charas 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 N.D.P.S. Case No. 23 of 2022 arising out of Sakra P.S. Case No. 634 of 2021, pending in the Court of learned 1st Additional Sessions Judge, Muzaffarpur.

Prayer is refused.

(Rajesh Kumar Verma, J)

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