

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2845 of 2023

Arising Out of PS. Case No.-82 Year-2022 Thana- MOTIPUR District- Muzaffarpur

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GUNJESH KUMAR PANDEY @ GOLU KUMAR PANDEY S/o Upanesh
Pande R/o Village- Maisahan at present in front of Chhinna Mastika Temple,
Kanti, P.S.- Kanti, Distt- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Adv.

For the Opposite Party/s : Mr. Prem Kumar Jha, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 15-05-2023 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

Petitioner seeks bail, who is in custody since
03.03.2022 in connection with Motipur P.S. Case No. 82/2022,
F.I.R. dated 02.03.2022, for the offences punishable under
Sections 25(1-B) a, 26/35 of the Arms Act and Sections 8/20/22
of NDPS Act.

According to prosecution case, one kilogram of
Charas along with one loaded country made pistol has been
recovered from the petitioner and other co-accused persons.

Learned counsel for the petitioner submits that the
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 no contraband article has been recovered from the possession of the petitioner rather the recovery has been made from the co-accused, namely, Rahul Kumar @ Babua Don. So, no case is made out under the N.D.P.S. Act.

Learned Additional Public Prosecutor for the State on the other hand has vehemently opposed the prayer for bail of the petitioner and submits that it appears from the seizure list that one kilogram of Charas has been recovered from the possession of the accused persons and the F.S.L. report also confirms that the recovered contraband is commercial quantity. So, there is embargo under Section 37 of the NDPS Act.

Result of Examination:-

“The brownish black solid substances contained in the small plastic box as described above was found to be ‘CHARAS’ containing Tetrahydrocannabinol (T.H.C.) as their chief intoxicating ingredients.

‘CHARAS’ is also known as Hashish which is a resinous exudates of the flowering and fruiting top of the female plant of Cannabis Sativa.”

The grant of bail in NDPS cases where the recovery of commercial quantity of narcotic is alleged is circumscribed under Narcotic Drugs and Psychotropic Substances 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 & Ors, reported in 2020 (12) SCC 122, Narcotic Control Bureau Vs. Mohit Aggarwal, reported in AIR 2022 SC 3444 and SLP (CRL) No.2351 of 2023 (Union of India Vs. Ajay Kumar Singh @ Pappu)** dated 28.03.2023.

The recovery of huge quantity of Charas from possession of the petitioner 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 Motipur P.S. Case No. 82/2022 pending in the court of learned Additional Sessions Judge-II, Muzaffarpur.

Prayer is refused.

(Rajesh Kumar Verma, J)

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