

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5385 of 2023

Arising Out of PS. Case No.-256 Year-2022 Thana- GOVERNMENT OFFICIAL COMP.
District- Gaya

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Binod Mishra S/o Late Harsh Narayan Mishra R/o Village- Bhatewara, P.O.
Kalna, P.S.- Vindhyachal, Distt- Mirzapur, Uttar Pradesh.

... .. Petitioner/s

Versus

The State of Bihar and Ors

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Pandey, Advocate
For the Opposite Party/s : Mr. Shailendra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

5 27-06-2023 Heard learned counsel for the petitioner learned APP
for the State.

Learned counsel for the petitioner is permitted to
remove the defect(s), as pointed out by the office, if any, within
a period of four weeks from today.

Petitioner seeks bail who is in custody since
08.05.2022 in connection with Samekit Janch Chowki Dobhi,
Gaya Excise Case No. 256 of 2022 for the offences punishable
under Sections 8/ 20(b) and 2(c) of the N.D.P.S. Act, 1985.

Recovery is of 200 kg of Ganja.

Learned counsel for the petitioner submits that
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 nothing has been recovered from the possession of the petitioner rather the recovery has been made from the truck in question and the petitioner has no role at all in the present occurrence. He further submits that the petitioner is the driver of the truck in question.

Learned Additional Public Prosecutor on the other hand vehemently opposed the prayer for bail of the petitioner and submits on the basis of the material available on record and the case diary, that the F.S.L. report confirms that the recovered contraband is Ganja and the recovered contraband is more than 10 times of 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 petitioners have 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 Ganja 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 Samekit Janch Chowki Dobhi, Gaya Excise Case No. 256 of 2022 pending in the Court of learned Sessions Judge cum Special Judge (NDPS Act), Gaya.

Prayer is refused.

(Rajesh Kumar Verma, J)

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