

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19525 of 2024

Arising Out of PS. Case No.-12 Year-2023 Thana- N.C.B (GOVERNMENT OFFICIAL)
District- Saran

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Rajesh Sah Son of Late Baidyanath Sah Resident of Village- Sidhwaliya
Senuriaya Tola, Ward No. 11, PS- Kangali, Dist- West Champaran
... .. Petitioner/s

Versus

- 1. The State of Bihar
- 2. NCB, Patna through the Union of India, Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Jha, Adv.
For the State	:	Mr. Madhura Nand Jha, APP
For the UOI	:	Mr. Ram Tujabh Singh, CGC
		Mr. Radhika Raman, Sr. CGC

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CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA
ORAL ORDER

9 04-10-2024 Heard learned counsel for the petitioner and

learned APP for the State.

2. The petitioner seeks bail in connection with NCB

Case No. 12 of 2023 instituted for the offences under

Sections 8(C), 20(b)(ii)(C), 25 & 29 of the N.D.P.S. Act.

3. As per prosecution case, the police, on receipt of

secret information, the Informant along with the police party

reached at the place of occurrence and saw a motorcycle was

coming which was stopped and the two persons sitting on

the motorcycle were apprehended who disclosed their names

as Subhash Sah and Pramukh Pandit. On search, the police



recovered 15.900 Kgs. of Charas from their possession which was seized.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence as alleged against him and has falsely been implicated in the present case. The petitioner is the owner of the seized motorcycle. He further submits that the co-accused Subhash Sah had borrowed the alleged motorcycle of the petitioner on the pretext of purchasing medicines for his ailing wife and, thus, the petitioner had no knowledge as to when and how contraband was loaded on his motorcycle by the co-accused Subhash Sah. The petitioner has nothing to do with the trade and transportation of any illegal articles. The petitioner has also no concern with the seized contraband. He further submits that the involvement of the petitioner has been surfaced in course of investigation on the disclosures made by the apprehended accused persons. Nothing incriminating has been recovered from the conscious possession of the petitioner. The petitioner has one criminal antecedent as has been stated in Para-3 of the supplementary affidavit in which



he is on bail and is languishing in judicial custody since 06.10.2023 without any rhymes or reason. Learned counsel for the petitioner submits that there is no compliance of Section 50 and Sub-Section (3) of the Section 51-A of the N.D.P.S. Act. It is also submitted that there is no compliance of Section 100 of the Cr.P.C.

5. Learned counsel for the petitioner by way of filing supplementary affidavit has submitted that in the present case, the charge-sheet has been submitted without waiting for the F.S.L. report showing the recovered substance to be Charas like substance and, on this ground, the petitioner is liable to be released on bail. In support of his submission has placed reliance in the case of ***Ram Babu Yadav Vs. The State of Bihar reported in PLJR 2020 (2) 465.*** He has also placed reliance on a judgment passed in the case of ***Manoj Yadav Vs. The State of Bihar*** passed in ***Cr. Misc. No. 25346 of 2022.***

6. On the other hand, learned A.P.P. for the State as well as learned counsel for the N.C.B. have vehemently opposed the prayer for grant of bail to the petitioner, stating



that the recovery of contraband is above the commercial quantity and, hence, there is bar under Section 37 of the N.D.P.S. Act. He further submits that the prayer for bail of the co-accused Subhash Sah @ Subhas Sah has already been rejected by this Court vide order dated 30.04.2024 passed in Cr. Misc. No. 16855 of 2024.

7. Learned counsel for the NCB has filed counter affidavit stating therein that the CAFD and CDR of the mobile numbers revealed by the co-accused persons and also obtained during investigation, were obtained from the respective telecom service providers and analyzed and after analysis of the same, it is found that the petitioner has CDR linkages with suspected supplied of the seized drugs namely Bhagat having 47 in out calls. Further, the petitioner has CDR linkages with Binod/Binod Yadav who had received the seized drugs in case of successful transportation of drugs, having 32 in out calls. Further, the petitioner has CDR linkages with carrier of the seized drugs namely Subhash Sah having 114 in out calls. Hence, it is evident that the petitioner is well connected with the arrested and non-



arrested accused persons and the petitioner has knowingly involved himself in illicit trafficking of the seized drugs.

8. Learned counsel for the NCB further submits that the seized 15.900 Kgs. Charas is not only a commercial quantity but almost 16 times higher than its prescribed commercial quantity. The petitioner has also CDR linkages with the arrested and absconding accused persons and, hence, he does not deserve bail by this Court.

9. After filing of the written report by the N.C.B., the case was registered under Sections 8(C)/20(b)(ii) (C)/25/29 of the Narcotic Drugs and Psychotropic Substance (N.D.P.S.) Act, 1985. Section 27(A), 29 and 37 of the of the N.D.P.S. Act reads as follows;

"27A. Punishment for financing illicit traffic and harbouring offenders.— *Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of clause (viii) of section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:*



Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

Section 29. Punishment for abetment and criminal conspiracy.

(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which--

*(a) would constitute an offence if committed within India;
or*

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of



Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

10. From perusal of the written report filed by the N.C.B., it appears that huge quantity of Charas weighing 15.900 Kg. has been seized in this case and the involvement of the present petitioner has been surfaced in this case on the disclosures made by the apprehended accused persons. Therefore, considering the instant case, it is evident that Section 27A and Section 29 of the N.D.P.S. Act are duly



invoked pursuant to the involvement of the petitioner/accused for financing illicit trafficking and harbouring offenders. This Court also finds that the contraband recovered is much more than commercial quantity and, thus, there is also a bar under Section 37 of the N.D.P.S. Act.

11. Having heard rival contention of both the parties and considering the entire facts and circumstances of the case, this is not a fit case for granting bail. The material placed on record by the prosecution palpably shows in prima facie that Section 27A and Section 29 of the N.D.P.S. Act is squarely applicable. Thus, the rigor of Section 37 of the N.D.P.S. Act is attracted.

12. Accordingly, the prayer for bail of the petitioner, above named, is rejected with a direction to the court below to expedite the trial and conclude the same expeditiously.

(Rudra Prakash Mishra, J)

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