

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20165 of 2024

Arising Out of PS. Case No.-8 Year-2023 Thana- N.C.B (GOVERNMENT OFFICIAL)
District- Patna

Subhash Yadav @ Subash Yadav S/o Sh. Hirdyanand Yadav R/o Village-
Sahpur, ward no.02, P.S.- Sahpur, District- Bhojpur

... .. Petitioner/s

Versus

Union of India through the Intelligence Officer, Narcotics Control Bureau,
Patna Patna, Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ravindra Kumar, Adv.
For the U.O.I.	:	Mr. Mr.Awdhesh Kr. Pandey, Sr. CGC
		Mr. Arvind Kumar, CGC
		Mr. Lokesh, Adv.

CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA
ORAL ORDER

6 19-07-2024 Heard learned counsel for the petitioner and learned
counsel for the N.C.B.

2. The petitioner seeks bail in connection with Special
(N.D.P.S.) Case No. 261 of 2023 arising out of N.C.B.
Crime/Case No. NCB/PZU/Cr. No. 08 of 2023 instituted for the
offences under Sections 8(C), 21(C), 27(A) and 29 of the
Narcotic Drugs and Psychotropic Substance (N.D.P.S.) Act,
1985.

3. The prosecution case, in short, is that the NCB
Team, on receipt of secret information, reached at the place of
occurrence and apprehended two accused persons who disclosed
their names as Ashish Kumar Gupta and Aditya Kumar. On
search, the police recovered 735 grams of *Heroin* kept in a



trolley bag from their possession. On interrogation, they disclosed that the seized contraband was to be delivered to the father of the co-accused Raja, namely, Gopal Sah at Brahampur, Buxar. Thereafter, the police reached at Brahampur and apprehended the accused/Gopal Sah who disclosed that he had come there to take Heroin to deliver the same to co-accused Subhash Yadav (the petitioner). After sometime, the accused/petitioner Subhash Yadav, having a bag in his hand, came there and was also arrested by the N.C.B. On search, Rs. 6,18,600/- was recovered from the bag. On query, he disclosed that the he had come there to buy Heroin from co-accused Gopal Sah.

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. He further submits that the petitioner has no connection with the alleged recovered substances. Nothing incriminating has also been recovered from the physical/conscious possession of the petitioner. The name of the petitioner has surfaced in this case on the basis of the disclosures made by the co-accused Gopal Sah in his confessional statement before the police officials. It is alleged that the police has recovered Rs. 6,18,600/- from the



possession of the petitioner but, there is no separate seizure list made by the NCB team which raises suspicion about the recovery from the petitioner. There is no eye-witness present at the alleged place of occurrence who has supported the alleged occurrence. The petitioner has no criminal antecedent and is languishing in judicial custody since 21.05.2023.

5. On the other hand, learned counsel for the Union of India has vehemently opposed the prayer for grant of bail to the petitioner. He submits that 735 grams of Heroin along with Rs. 6,18,600/- in cash was recovered from the possession of four accused persons which falls under the commercial quantity under the NDPS Act. He has filed counter affidavit in the matter wherein he has stated that on the alleged day of occurrence i.e. on 20.05.2023, the NCB team reached at the place of occurrence and arrested Gopal Sah who disclosed that he had come for receiving Heroin i.e. 750 gms of Heroin from co-accused Aditya Kumar which had to be further delivered to the petitioner Subhash Yadav in exchange of money. On interrogation, the petitioner/Subhash Yadav has admitted that he had come to purchased Heroin from Gopal Sah by paying Rs. 6,00,000/-. He has further stated that the confessional statement of Gopal Sah is fully corroborated by the petitioner as well as of his conscious



involvement in the illegal trafficking of drugs. He has finally submitted that the allegation leveled against the petitioner is serious in nature and, thus, he does not deserve privilege of regular bail.

6. After filing of the complaint petition by the N.C.B., the case was registered under Sections 8(C), 21(C), 27(A) and 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.

7. From perusal of the complaint filed by the NCB, it appears that initially two co-accused persons were apprehended by the NCB Team and total 735 gram Heroin was recovered from them. The NCB has also recovered cash of Rs. 6,18,600/- from the accused/petitioner Subhash Yadav who has admitted that he had come there to purchase Heroin from the co-accused Gopal Sah. 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.

8. 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.

9. 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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