

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20570 of 2024

Arising Out of PS. Case No.-448 Year-2023 Thana- RAXAUL District- East Champaran

Basudeo Chaudhary Son Of Late Jungbahadur Chaudhary R/O-Purandarpur,
P.S.-Nautan, Distt.-West Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh, Advocate

For the Opposite Party/s : Mr. Jitendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

8 22-10-2024 Heard Mr. Krishna Kant Sing learned counsel for the

petitioner and Mr. Jitendra Kumar Singh learned APP for the

State.

2. The petitioner is in judicial custody in connection
with Raxaul P.S. Case No. 448 of 2023 for the offences
punishable under Sections 8/20(b)(ii)(c) of the N.D.P.S. Act,
lodged on 06.10.2023 by the informant, Sanjivan Paswan (A.S.I.
of Raxaul Police Station).

3. As per the prosecution story, the informant alleged
that during patrolling duty, he got secret information on the
movement of narcotic substance from Nepal to India near
Raxaul. In course of checking, the police found a person trying
to escape. Upon search, beside the Nepali/Indian currency, 1
kilogram narcotic substance (*charas*) was recovered/seized
signed in the presence of the local Circle Officer which led to
the F.I.R.



4. This submitted by the learned counsel for the petitioner that despite the statement made in the F.I.R. that the recovery/seizure has been made in presence of the local Circle Officer, no such signature is there. Further, even assuming that the recovery/seizure is 1 kilogram *charas*, it just comes within the ambit of less than commercial quantity inasmuch as anything specified as small and commercial quantity, more than the said quantity will come under the commercial quantity and not otherwise. He has taken this Court to Section 2(viia) of the N.D.P.S. Act, 1985 and as per it, the commercial quantity means any quantity greater than the quantity specified by the Central Government by its notification in the official gazette.

5. He has further taken this Court to Sr. No. 23 of the notification specifying the 'small quantity' and 'commercial quantity' in 'the N.D.P.S. Act' according to which, the 'small quantity' of *charas* is 100 grams while the 'commercial quantity' is 1 kilogram.

6. Lastly, he has taken this Court to orders of the coordinate Bench in Cr. Misc. No. 59762 of 2024 (Ajay Manjhi vs. State of Bihar) and Cr. Misc. No. 32503 of 2024 (Pyaare Khalifa vs. State of Bihar and Anr.) to submit that considering the aforesaid facts, reliefs have been granted.



7. Though, learned APP opposes the prayer for bail submitting that it is touching the commercial quantity, he also have taken note of Section 2(viia) of the N.D.P.S. Act, according to which any quantity greater than the quantity specified by the Central Government by the notification in the official gazette shall be the commercial quantity.

8. Taking into account the aforesaid facts and submission put forward by the parties as also Section 2(viia) of 'the N.D.P.S. Act' coupled with the fact that the signature of the concerned Circle Officer as incorporated in the F.I.R. is missing, 1 kilogram of *charas* as per 'the N.D.P.S. Act' does not come within the commercial quantity, as recorded above, he is in custody since 07.10.2023 (para 13 of the petition), this Court is inclined to extend him privilege of bail with strict conditions.

9. Let the petitioner be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of like amount each to the satisfaction of learned Sessions Judge/Special Judge, East Champaran, Motihari in connection with Raxaul P.S. Case No. 448 of 2023, subject to the following conditions:

(i) one of the bailor should be the family member/relative of the petitioner who shall provide official



document to show his bona fide;

(ii) the petitioner shall appear on each and every date before the Trial Court failure to do so for two consecutive dates without plausible reason will entail cancellation of his bail bond by the Trial Court itself;

(iii) the petitioner shall appear before the concerned police station every month till conclusion of the trial to mark his attendance;

(iv) the petitioner shall in now way try to induce or promise or threat the witnesses or tamper with the evidences, failing which the State shall be at liberty to take steps for cancellation of the bail bonds;

(v) the petitioner shall desist from committing any criminal offence again, failing which the State shall be at liberty to take steps for cancellation of his bail bonds.

(Rajiv Roy, J)

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