

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23111 of 2024

Arising Out of PS. Case No.-86 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Gaya

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Gurdev Singh @ Gaurav Singh S/O Sukhdev Singh R/O Village Chativind,
P.S. Chativind, District Amritsar (Punjab)

... .. Petitioner/S

Versus

Union Of India Through Narcotics Control Bureau, C.G.O. Complex, 4th
Floor, D And E Block, Karpuri Cgo Complex, 4th Floor, D And E Block,
Karpuri Thakur Sadan, Rajiv Nagar, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Tiwary, Advocate
For the Opposite Party/s : Mr. Bharat Bhushan, APP

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

6 22-10-2024 Heard Mr. Dhananjay Kumar Tiwary, learned counsel
for the petitioner and learned APP for the State.

2. The petitioner is in judicial custody in connection with
N.D.P.S. Case No. 86 of 2021 arising out of Excise P.S. Case
No. 86 of 2021 for the offences punishable under Sections 20(b)
(ii)(c) of the N.D.P.S. Act, 1985, lodged on 01.12.2021.

3. As per the prosecution story, the informant, a Sub-
Inspector of Police, Excise Department alleged that on
01.12.2021, in course of search of vehicle, a container coming
from the Jharkhand was intercepted and there is allegedly,
recovery of 141 kilogram 600 gram of *ganja* from the scrap
loaded in the container, the petitioner was sent to judicial



custody which followed the F.I.R.

4. Learned counsel for the petitioner submits that he is in custody since 02.12.2021 (para 4 of the petition) and do not have criminal antecedent. Further, the chargesheet was submitted in haste without waiting for the F.S.L. report and it is categorical submission of learned counsel for the petitioner that till date, the F.S.L. report has not come.

5. Learned APP Mr. Bharat Bhushan submits that as per the year 2022 report of the concerned Excise Official, the F.S.L. report was not received.

6. Learned counsel for the petitioner has taken this Court to a judgment of a coordinate Bench in ***Ram Babu Yadav vs. State of Bihar*** reported in ***2022 (2) PLJR 463*** according to which in the submission of chargesheet in absence of F.S.L. report, the petitioner is entitled to bail.

7. Learned APP opposes the prayer for bail submitting that the huge quantity of ganja has been recovered from the container and the petitioner has rightly been arrested.

8. Having gone through the facts of the case as also the material on record, the facts that emerges is/are:-

(i) the petitioner was arrested as the vehicle was intercepted and there was recovery of



141 kilogram 600 gram alleged ganja, chargesheet was submitted in the matter without awaiting for the F.S.L. report;

(ii) as pointed out by the learned APP, in the year 2022, again, the Excise Official informed that no F.S.L. report is on record.

9. It is surprising that without waiting for the F.S.L. report, the chargesheet has been submitted in the matter. This, despite the fact that under the N.D.P.S. Act, in such cases, there is provision of filing chargesheet up to 180 days and it is not restricted to 90 days.

10. Further, para 18 of the order of **Ram Babu Yadav** (*supra*) is incorporated hereinbelow:-

18. Considering the submissions of the parties, the Court finds considerable force in the contention raised by the learned counsel for the petitioner that though the present case is not with regard to default bail, but then charge-sheet came to be submitted in absence of F.S.L., merely because the Investigating Officer felt that the accused would get the benefit of default bail under Section 167(2) of the Cr.P.C. amply reflects that the Investigating Officer was not aware of the provisions relating to N.D.P.S. Act and



was completely oblivious of Section 36A(4) of the N.D.P.S. Act as such mere filing of charge-sheet in absence of F.S.L. does not justify the incarceration of the petitioner in custody as such for the present, for the purposes of bail, without expressing any opinion on merits of the case, the petitioner is directed to be enlarged on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Judge-10, Sasaram, Rohtas in connection with Dinara (Bhanas O.P.) P.S. Case No. 267 of 2020 corresponding to N.D.P.S. Case No. 11 of 2020 subject to the condition as laid down under Section 437(3) Cr.P.C.

11. Learned counsel for the petitioner has also taken this Court to the orders of the coordinate Benches in the case of Rampravesh Diswa (Cr. Misc. No. 65898 of 2023) and Sikandar Singh @ Sikander Singh (Cr. Misc. No. 8289 of 2024) in which, having considered the case of **Ram Babu Yadav (supra)**, bail was granted to the concerned accused persons.

12. The petitioner has made out a case. He is in custody since 02.12.2021, as stated above and despite the passage of around three years, trial has not still commenced.



13. In that background and on the undertaking given by the learned counsel for the petitioner that he will be diligently appearing in trial, this Court is inclined to extend him privilege of bail.

14. Let the petitioner be released on bail on furnishing bail bond of Rs. 50,000/- (Fifty thousand) with two sureties of like amount each to the satisfaction of learned Sessions Judge, Gaya in connection with N.D.P.S. Case No. 86 of 2021 arising out of Excise P.S. Case No. 86 of 2021, 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 fortnight for next six months 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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