

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27091 of 2024

Arising Out of PS. Case No.-82 Year-2022 Thana- MOTIPUR District- Muzaffarpur

Rahul Kumar @ Babua Don S/o Lakhindra Ray Resident Of Village Bhawani
Dih, P.s. - Motipur, Distt. - Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Advocate

For the State : Mr. Bhanu Pratap Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

4 05-07-2024 Heard Mr. Manoj Kumar, learned counsel for the

petitioner and Mr, Bhanu Pratap Singh, learned APP appearing

on behalf of the State.

2. Petitioner seeks bail, who is in custody since
03.03.2022, in connection with Motipur P.S. Case No. 82 of 2022
(N.D.P.S. Case No. 75 of 2022) for the offences punishable under
Sections 25(1-B)a, 26 and 35 of the Arms Act and under Sections
8, 20 and 22 of the N.D.P.S. Act, 1985.

3. Recovery is of 1 kg of opium (*charas*), one loaded
country made katta.

4. Learned counsel for the petitioner submits that
petitioner is innocent and he has falsely been implicated in the
present case. He further submits that from a bare perusal of the
FIR as well as seizure list it appears that altogether 1 kg of opium
(*charas*) has been recovered from the possession of the



petitioner. He further submits that although the recovery has been made from the possession of the petitioner but the other co-accused person, namely, Gunjan Kumar Pandey @ Golu Kumar Pandey @ Gunjesh Pandey @ Golu Pandey has been granted bail by this Court vide order dated 09.02.2024 passed in Cr. Misc. No. 85325 of 2023 and other co-accused person, namely, Vikram Kumar has also been granted bail by a co-ordinate Bench of this Court vide order dated 21.03.2023 passed in Cr. Misc. No. 64372 of 2022.

5. Learned Additional Public Prosecutor on the other hand vehemently opposed the prayer for bail of the petitioner and submits that the F.S.L. report confirms that the recovered contraband is opium and the recovered contraband is more than the commercial quantity, so there is embargo under Section 37 of the N.D.P.S. Act to enlarge the petitioner on bail. He further submits that petitioner carries three criminal antecedent other than the present one but fairly submits on the basis of the paragraph-3 of the bail petition that the petitioner is on bail in all the pending matters.

6. 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.

7. 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*.

8. The recovery of huge quantity of opium 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.

9. Hence, I am not inclined to enlarge the petitioner on bail in connection with Motipur P.S. Case No. 82 of 2022 (N.D.P.S. Case No. 75 of 2022) pending in the Court of learned Additional Sessions Judge, II Cum Exclusive Special Court-II (NDPS).

10. Prayer is refused.

(Rajesh Kumar Verma, J)

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