

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30462 of 2024

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

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Gopal Sah Son of Sudama Sah Resident of Village- Chandrapura, Ward No. 9,
P.O.- Hathilpur, P.S.- Brahampur, Dist.- Buxar

... .. Petitioner/s

Versus

The Intelligence Officer, N.C.B., Patna Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Adv. Ms. Vaishnavi Singh, Adv.
For the Opposite Party	:	Mr. Arvind Kumar, C.G.C. Mr. Awdhesh Kr. Pandey, Sr. C.G.C.

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**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

ORAL ORDER

3 23-05-2024 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 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 (the petitioner) at Brahampur, Buxar. Thereafter, the police reached at Brahampur and apprehended the accused/Gopal Sah (petitioner) who disclosed that he had come there to take Heroin to deliver the same to co-accused Subhash Yadav. After sometime, the accused 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 Gopal Sah, the petitioner.

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 has no concern with any of the co-accused persons. The petitioner is neither the owner of the contraband article nor has got any concern with the recovered cash. Learned counsel further submits that nothing incriminating has been recovered from the physical/conscious possession of the petitioner. Learned counsel further submits that there is no telephonic conversation of the petitioner with any of the accused



persons on record. There is also no direct involvement of the petitioner in the alleged occurrence. Learned counsel for the petitioner further submits that the petitioner is an ailing man and is a cancer patient and has developed cancer in his right knee. The petitioner has been referred to P.M.C.H. and he needs constant medical attention in order to save his life. Learned counsel again points out that due to cancerous mass present in the knee, he is even unable to move and is mostly confined to bed. Learned counsel for the petitioner has also produced the pathology report of the petitioner dated 30.03.2024 issued by the I.G.I.M.S., Sheikhpura, Patna wherein impression has been given as “Features are suggestive of Malignant lesion”. The petitioner has one criminal antecedent under the Excise Act and is languishing in judicial custody since 21.05.2023 without any rhymes or reason. In the last, learned counsel for the petitioner has prayed for medical check-up of the petitioner in the Mahavir Cancer Sansthan, Patna.

5. On the other hand, learned counsel for the Opposite Party has vehemently opposed the prayer for grant of bail to the petitioner. He has filed counter affidavit in the matter and has stated that the police has recovered huge quantity of 735 gram of *Heroin* from the accused persons which was to be delivered



to the petitioner/Gopal Sah and the same was again to be delivered to co-accused Subhash Yadav. The NCB Team has also recovered a bag containing Rs. 6,18,600/- from the co-accused Subhash Yadav. He further submits that the petitioner himself has confessed in his voluntary statement u/s 67 of the N.D.P.S. Act, 1985 that he had full knowledge about 735 grams of Heroin which was further handed over to co-accused Subhash Yadav with the help of his son and co-accused Raja Sah. He further submits that before this seizure, the petitioner had also received 250 grams of Heroin from co-accused Aditya Kumar at Buxar and delivered to co-accused Subhas Yadav through his son and co-accused Raja Sah by paying Rs. 2,50,000/-. He has further stated on analysis of C.D.R. of the mobile numbers of the accused persons, they all are found in contact with each other which confirms their involvement for financing illicit trafficking of the seized drugs.

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 petitioner in his confessional statement has confessed that the alleged contraband was to hand over to co-accused Subhas Yadav with the help of his son and co-accused Raja Sah. The NCB has also recovered cash of Rs. 6,18,600/-



from co-accused Subhash Yadav who has also admitted that he had come there to purchase Heroin from the petitioner 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.

10. The I.G. (Prison), State of Bihar and the Superintendent of Jail, Beur, Patna are directed to provide best medical facility to the petitioner as per his medical requirement.

11. Let a copy of this order be sent to the I.G.



(Prison), State of Bihar and the Superintendent of Jail, Beur,
Patna for strict compliance of this order.

(Rudra Prakash Mishra, J)

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