

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32503 of 2024

Arising Out of PS. Case No.-155 Year-2023 Thana- BELSAND District- Sitamarhi

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Pyaare Khalifa S/o Nanhki Khalifa R/o Kolhua, P.S. - Ahiyapur, Distt. - Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Narcotic Bureau through its Director Patna Cell, Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Vindhya Keshari Kumar, Sr. Advocate
		Mr. Ravi Shankar Pathak, Advocate
For the Opposite Party/s :		Mr. Arun Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 31-07-2024 Heard learned Senior Advocate representing the petitioner and the learned APP for the State.

2. The petitioner seeks grant of regular bail, who is in custody in connection with Belsand P.S. Case No. 155 of 2023 registered for the offences punishable under Sections 8/20(b) (ii)(B)/23 of the N.D.P.S. Act.

3. Based on a written report the prosecution alleges that the police on a tip of smuggling of contraband substance intercepted a bus. In course of checking, the petitioner was apprehended with a polythene bag containing 1 kg of *Charas*.

4. Referring to the FIR, learned Senior Advocate for the petitioner primarily contended that the alleged recovery



has been made from a public transport and, as such, in absence of any cogent material that the petitioner was carrying that bag, the implication of the petitioner in the present case is quite doubtful. It is further contended that even if the case of the prosecution is believed that 1 kg of *Charas*, allegedly shown to have been recovered from the possession of the petitioner; as per the definition of commercial quantity as defined under Section 2(viia) of the N.D.P.S. Act is lesser than commercial quantity. In this regard, notification has also been issued by the Central Government in its official gazette.

“13. As per the notification dated 19.10.20001 specifying ‘small quantity’ and ‘commercial quantity’, at Sr. No.23, ‘small quantity’ for charas is provided as 100 gms and the ‘commercial quantity’ is provided as more than 1 kg. As such, the ‘commercial quantity’ would be greater than the quantity of 1 kg of Charas as specified by the Central Government by its notification ibid. Punishment for contravention in relation to cannabis plant and cannabis is provided under Section 20 of the N.D.P.S. Act.”

5. Referring to the aforementioned notification learned Senior Advocate further submitted that the ***High Court of Punjab and Haryana at Chandigarh*** in case of ***Dharampal Pasvan Vs. State of Punjab*** in ***CRA-S-2943-SB-2014*** held that the recovery of 1 kg of *Charas* does not fall within the definition



of commercial quantity as the said quantity is not greater than the quantity specified by the Central Government. Therefore, it attracts punishment only under Section 20 (b) (ii) (B) of the N.D.P.S. Act.

6. Learned Senior Advocate further submits that there is no compliance of Sections 42 and 50 of the N.D.P.S. Act inasmuch as neither the personal knowledge or information given by any person of confidential information has been taken down in writing nor the petitioner has been informed his right to be searched before the nearest magistrate. It is next contended that since the recovered substance is more than small quantity but lesser than commercial quantity and as such the rigors provided under Section 37 of the N.D.P.S. Act would not be applicable. The petitioner bears absolutely fair antecedent and all the investigation of the crime is complete and the charge-sheet has been submitted but without any FSL report.

7. On the other hand, learned Advocate for the State vehemently opposes the bail application and referring to the table of the N.D.P.S. Act, 1985 vigorously contended that it clearly denotes 1 kg of *Charas* as a commercial quantity. The FIR clearly reveals that the petitioner was having in possession of contraband substance under such circumstances he does not



deserve any consideration for grant of Bail.

8. This Court has carefully heard the submissions of learned Advocates for the respective parties. Suffice to say that what amount to conscious possession was considered by the Hon'ble Supreme Court in the case of *Dharampal Pasvan Vs. State of Punjab*, reported in *2010 Volume 9 SCC 608* wherein it was held that knowledge of possession of contraband has to be gleaned from the facts and circumstances of the case, the standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another.

9. This Court also finds substance in the submission of the petitioner that in terms of the notification issued by the Central Government, the contraband recovered in the present case does not fall within the definition of commercial quantity as in order to bring the quantity under the category of commercial, in case of recovery of *Charas*, it should be more than 1 kg. In view thereof, the rigors provided under Section 37 of the N.D.P.S. Act would not be applicable in the present case. The materials on record also suggest that there is no proper compliance of mandatory provisions of the N.D.P.S. Act.



10. Regard being had to the submissions made on behalf of the parties and considering the aforementioned facts; coupled with the fair antecedent of the petitioner and the investigation of the crime is complete, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs. 50,000/- (Rupees fifty thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge Cum Special Judge, Sitamarhi in connection with Belsand P.S. Case No. 155 of 2023, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-

(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(v) The court below shall verify the criminal antecedent of the petitioner and in case, at any stage, it is found



that the petitioner has concealed his criminal antecedent, the court below shall take immediate step for cancelling the bail bond of the petitioner. However, the acceptance of bail bonds, in terms of the above-mentioned order, shall not be delayed for this purpose or in the name of verification.

(Harish Kumar, J)

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