

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34345 of 2024

Arising Out of PS. Case No.-17 Year-2024 Thana- SONO District- Jamui

Neeraj Kumar Son of Dinesh Pal Prasad @ Dinesh Pal Resident of Village-
Gaderiya Tola (Manjhauli), PS- Salimpur, Dist- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. N A Shamsi, Advocate

For the Opposite Party/s : Mr. Nagendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

3 26-07-2024 Heard Mr. N A Shamsi, learned Advocate for the

petitioner and learned Additional Public Prosecutor for the

State.

2. The petitioner seeks regular bail, who is in custody
in connection with Sono P.S. Case No. 17 of 2024 registered for
the offences punishable under Sections 8, 20(b)(ii)(C), 25 and
28 of the N.D.P.S. Act and Section 120B of the Indian Penal
Code.

3. Based upon the written report, the prosecution
alleges that on a confidential information, the police intercepted
a truck bearing registration no. BR06G-6821. Noticing the
police party, the driver of the truck succeeded in fleeing away.
On search, total 461.95 Kg. ganja like substance was recovered.



The seizure list was prepared at the place of occurrence and as no independent person was present there, the seizure list was pasted on a tree.

4. Learned counsel for the petitioner contended that the FIR has been instituted against the owner and the driver of the truck in question. The narratives of the FIR clearly suggest that only the driver was present on the truck, who succeeded in fleeing away. During the course of investigation, it has come that the truck in question was registered in the name of one Mukul Kumar. When the police apprehended said Mukul Kumar, who disclosed the fact that a year ago on account of agreement to sell, the truck in question was handed over to this petitioner. Only on the basis of the statement of Mukul Kumar, the petitioner has made accused in this case and his statement has been recorded by the police. Even as per the confessional statement of the petitioner, he has disclosed that the truck in question was handed over to one Ravi Kumar for transportation.

5. Adverting to the aforesaid fact, learned counsel for the petitioner thus contended that there is no valid document or any registration certificate suggesting that the petitioner was the real owner of the truck in question. Moreover, for the sake of argument, if on account of the agreement to sell, the petitioner



was in possession of the truck but there is no material suggesting that the petitioner was knowing this fact that ganja like substance was being carried by the driver. The FIR as well as the seizure list clearly suggest that the ganja was kept concealed under the sack of puffed rice; thus, it might be an isolated act of driver. Barring confessional statement of petitioner and co-accused, there is no cogent material. It is lastly contended that the petitioner is in custody since 13.01.2024 having fair antecedent and now the charge-sheet has been submitted.

6. On the other hand, learned counsel for the State vehemently opposed the application and submits that the alleged recovered ganja like substance is of commercial quantity and, as such, the rigors provided under Section 37 of the NDPS Act must be satisfied. The agreement to sell in respect to the truck in question in favour of the petitioner, from which huge contraband is recovered speaks loud against the petitioner.

7. Suffice it to note that Section 37 of the NDPS Act would not bar the release of the accused person on bail, it only mandate that before release, the public prosecutor must be given an opportunity to oppose the application, the Court is to be satisfied that there is reasonable ground to believe that he is not



guilty of such offence and that he is not likely to commit any offence while on bail.

8. The entire case is based on the confessional statement of the petitioner as well as an agreement to sell in respect to the truck, in question, allegedly executed 1 ½ month earlier from the date of occurrence. So far the confessional statement either recorded before the police or recorded under Section 67 of the NDPS Act, the same is not admissible in the eyes of law. This issue has been set at rest by the Apex Court in the case of **Toofan Singh v. State of Tamil Nadu [(2021) 4 SCC 1]**.

9. This is also the fact that the truck in question is still registered in the name of Mukul Kumar and there is no material evidence on the point of transfer of consideration money for purchase of truck from the account of the petitioner to the account of Mukul Kumar. Further, during the course of investigation, the police has failed to produce any CDR linkage to prove the complicity of the petitioner with Ravi Kumar @ Tuttu, who had been allegedly operating the truck.

10. Regard being had to the submissions made on behalf of the parties and considering the fact that during the course of investigation, there is no material suggesting that the



petitioner has had any control over the dominion of the recovered substance, as a result of personal knowledge and the intention based on such knowledge, coupled with the fact that neither the investigating officer has able to bring material that who was the consignor and consignee of the goods nor the driver has been apprehended, who can very well disclose that on whose instance, the substance was being carried out, moreover, the charge-sheet has been submitted but without obtaining the FSL report; and all the more the petitioner bears fair antecedent, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.50,000/- (Fifty thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge, Jamui in connection with Sono P.S. Case No. 17 of 2024, 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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