

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38960 of 2024

Arising Out of PS. Case No.-5 Year-2021 Thana- N.C.B (GOVERNMENT OFFICIAL)
District- Patna

Chabinath Yadav @ Chhabinath Yadav @ Chabhi Nath, Son of Late Nohar
Yadav, Resident of Village - Kurahana, Mugalsarai, P.S. - Ali Nagar, District -
Chandauli, Uttar Pradesh

... .. Petitioner/s

Versus

The Union of India through NCB Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Kush, Advocate

For the Opposite Party/s : Mrs. Shail Kumari, CGC.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

7 20-09-2024 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of NCB.

2. In the present case, the petitioner seeks bail in connection with Special (NDPS Act) Case No. 26 of 2024 arising out of F.No. NCB/PZU/V/05/2021 registered for the alleged offences under Section 8 (c), read with Sections 20 (b) (ii) (C), 25 and 29 of the NDPS Act, 1985.

3. As per prosecution case, acting on certain information, a team of NCB intercepted a truck and recovery of 151 kg of *ganja* was made from the truck which was concealed behind the seat of driver. The co-accused Bipin Rai and Dharmendra Kumar, who are stated to be driver and co-driver, respectively, were arrested. The petitioner is stated to be the owner of the truck and allegation is that he was also involved in the illicit trafficking of the contraband.



4. The learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in this case. There is no material on record to show how the petitioner is involved in the trafficking of the contraband except that he owns the truck in which the contraband was being smuggled. But the truck in question has been entrusted by the petitioner to his brother-in-law, Bajrangi Yadav to operate who along with his nephew, Brajesh Yadav @ Biru Yadav @ Biru Ji, operated the same. The involvement of Brajesh Yadav is evident from the statement of the co-accused person. The apprehended co-accused persons did not name this petitioner rather they named Brajesh Yadav @ Biru Yadav with whom co-accused was in regular contact through phone apart from two other co-accused persons, namely Arun Kumar and Pramod Kumar. Similarly, co-accused Jai Prakash Rai also named Brajesh Yadav who provided him with the truck. Even the co-accused driver stated about Brijesh Yadav owning the truck and he also furnished his mobile number. The mobile number with which the prosecution wants to connect the petitioner does not belong to him and no material has come on record regarding the said mobile number belonging to this petitioner. The learned counsel further submits that there could not be any presumption of guilt against the petitioner and there are reasonable grounds for believing that



accused petitioner is not guilty of such offence. The petitioner is having clean antecedent and it could be said that he is not likely to commit any offence while on bail. The learned counsel relies on the decision of the Hon'ble Supreme Court in the case of *Union of India vs. Rattan Malik* reported in **(2009) 2 SCC 624** wherein it has been held that the expression 'reasonable grounds' connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. It has further been held that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of not guilty.

5. The learned counsel for the petitioner further submits that there has been no conscious possession of contraband within the meaning of the provisions of NDPS Act and, in this regard, he refers to the decision of the Hon'ble Supreme Court in the case of *Union of India vs. Mohd. Nawaz Khan* reported in **(2021) 10 SCC 100** wherein it has been held that unless the possession was coupled with the requisite mental element, i.e., conscious possession and not mere custody without awareness of the nature of such possession and



provisions of Section 20 of NDPS Act are not attracted. Thus, the word 'conscious' means awareness about a particular fact and it is a state of mind which is deliberate or intended. The learned counsel also refers to the decision of the Hon'ble Supreme Court in the case of *Madan Lal vs. State of Himachal Pradesh*, reported in (2003) 7 SCC 465 wherein it has been held that the term 'possession' could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge. The learned counsel further refers to the decision of the Hon'ble Supreme Court in the case of *Sujit Tiwari vs. State of Gujarat* reported in (2020) 13 SCC 447. In that case, the Authorities had taken into custody the petitioner, who was the brother of an accused on the ground that he was informed on text by the accused of obtaining drugs for sale. The Hon'ble Supreme Court while allowing the appeal observed that even if the prosecution case was taken at the highest, the appellant was aware that his brother was indulging in some illegal activity because obviously such huge amount of money could not be made otherwise. The Hon'ble Supreme Court further observed that however, at this stage, it cannot be said with certainty whether he was aware that drugs were being



smuggled on the ship or not, though the allegation is that he made such a statement to NCB under Section 67 of the NDPS Act.

6. Thus, learned counsel for the petitioner submits that there is neither any conscious possession nor any act to show that the petitioner was having any knowledge of transportation of the ganja in his truck and nothing has come on record to show the involvement of the petitioner or to connect him with the offence as alleged except that he owns the truck in question. There is no evidence to justify continuation of the petitioner in custody and no purpose would be served by his continued incarceration. There is no chance of tampering the evidence by the petitioner. The petitioner is in custody since 14.07.2023 and he deserves to be enlarged on bail as there is no involvement in the alleged offence.

7. Learned counsel appearing on behalf of the NCB vehemently opposes the submission made on behalf of the petitioner. The learned counsel for the NCB further submits that the petitioner was issued notice under section 67 of the NDPS Act from time to time, but avoided appearance before the authorities. One such notice was received by the wife of the petitioner on 09.08.2021 and only, thereafter, Non-Bailable Warrant has been issued on 20.06.2023. The petitioner neither



appeared before the Investigating Officer nor submitted reply, which shows his guilty mind. The learned counsel further submits that the recovery was made from a secret cavity behind the seat of the driver and as the petitioner is the owner of the truck, such secret compartment could not be made without his knowledge.

8. I have given my thoughtful consideration to the rival submission of the parties and perused the record. Personal liberty as enshrined under Article 21 of the Constitution of India is precious and cannot be curtailed in casual manner merely on suspicion.

Having regard to the aforementioned facts and circumstances of the case and submission made on behalf of the parties and considering the clean antecedent of the petitioner and further considering the fact that there appears reasonable ground in the circumstances to hold that the petitioner might not have committed the offence as alleged since there is no material available on record to show his connection with the allegations about commission of offence and there appears no likelihood of further commission of offence under NDPS Act and also considering the period of custody of the petitioner and no requirement of custodial interrogation, the petitioner above-named is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (ten



thousand) with two sureties of the like amount each to the satisfaction of learned Exclusive Special Judge (NDPS Act), Court No.1, Patna, in connection with Special (NDPS Act) Case No. 26 of 2024, arising out of F.No. NCB/PZU/V/05/2021, subject to the conditions mentioned in Section 437 (3) of the Code of Criminal Procedure and also the following conditions :

- (i) One of the bailors will be a close relative of the petitioner.
- (ii) The petitioner will remain present on each and every date fixed by the court below.
- (iii) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bond of the petitioner will be liable to be cancelled by the court concerned.

V.K.Pandey/-

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(Arun Kumar Jha, J)

