

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 54728 of 2024

Arising Out of PS. Case No.-70 Year-2024 Thana- KALUAHI District- Madhubani

Mahendra Chaudhary @ Mahindra Chaudhary S/O Jagdish Chaudhry R/O
Village- Rambag, Ward No-41, P.S- Mithanpura, Distt.- Muzaffarpur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms.Vaishnavi Singh

For the Opposite Party/s : Mr.Mohammed Arif

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 14-08-2024 Heard learned Advocate for the petitioner and learned
Additional Public Prosecutor for the State.

2. This is an application for grant of bail to the petitioner, who is in custody in connection with Kaluahi P.S. Case No.70 of 2024, registered for the offences punishable under Sections 20/22 of the Narcotic Drugs and Psychotropic Substance Act.

3. In course of vehicle checking, the police intercepted a bus bearing Registration No. BR06PA8135. In course of checking two bags containing 5.226 kgms and 5.132 kgms, total 10.358 kgms ganja like substance was recovered beneath the seat of the petitioner.

4. Learned Advocate for the petitioner contended that the narrations made in the FIR clearly suggest that the alleged



recovery has been made from a public bus in which several passengers were seated. So far the allegation levelled in the FIR, it clearly reveals that the recovery has been made beneath the seat of the petitioner and as such, it was not in conscious physical possession. It is next contended that be that as it may the alleged recovered ganja like substance is much below the commercial quantity and as such the rigors provided under Section 37 of the NDPS Act is not applicable. It is next contended that the name of the petitioner has been implicated in this case only because of the fact that there is a criminal antecedent of identical nature, though the learned Advocate for the petitioner submits that he is on bail in connection with Custom Official P.S. Case No. 8 of 2023. It is next contended that there is no compliance of mandatory provisions of the NDPS Act. Moreover, charge sheet has been submitted without any FSL report. There are other infirmities in search and seizure. Now, the petitioner has been incarcerated since 13.04.2024.

5. On the other hand, learned APP for the State vehemently opposes the bail application and submits that the criminal antecedent of the petitioner in identical nature of crime speaks that the petitioner is a habitual offender and indulged in trafficking of contraband substance.



6. The question of conscious possession has to be determined with reference to a factual background. Recovery of contraband from a private vehicle and recovery from public vehicle are to be viewed differently in a later case unless the Investigating Officer or the prosecution is enable to show that there was complete awareness about the fact of concealment on the part of the accused and he was having control over the subject matter, inference cannot be drawn that recovery was made from conscious possession of the accused.

7. Regard being had to the submissions made on behalf of the parties and considering factum of recovery of contraband substance below the commercial quantity, coupled with the fact that the recovery has been made from a public transport and non-compliance of the mandatory provisions of the NDPS Act, moreover, the investigation of the crime is complete and the charge-sheet has been submitted, but without FSL Report, let the petitioner, abovenamed, 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 Special Judge, NDPS, Madhubani in connection with Kaluahi P.S. Case No. 70 of 2024, subject to the condition that one of the bailors shall be the own/close family members 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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