

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52753 of 2024

Arising Out of PS. Case No.-384 Year-2022 Thana- BUXAR MUFFSIL District- Buxar

Santosh Kamkar S/o Late Ramvilas Kamkar RESIDENT OF VILLAGE
NAGPUR POLICE STATION RAJPUR DISTRICT BUXAR

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shashi Ranjan Kumar, Adv.

For the Opposite Party/s : Mr. Choubey Jawahar, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

4 26-09-2024 Heard learned counsel for the petitioner and learned
A.P.P for the State.

2. The petitioner has preferred this application for grant of regular bail in connection with Buxar (Muffasil) P.S. Case No. 384 of 2022 dated 02.09.2022 registered for the offences punishable u/s 414 of the Indian Penal Code and under sections 20B, 22(c), 25 and 29 of the NDPS Act.

3. As per the prosecution case, total 121.407 kgs *Ganja* was recovered from a Bolero vehicle and the petitioner along with the other co-accused persons was sitting inside the said vehicle and they were apprehended who disclosed that the said *Ganja* was carried by us which belonged to the co-accused persons, Arun Kumar and Abhay Kumar Singh.



4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The petitioner is neither the owner nor the driver of the seized vehicle. Nothing has been recovered from the conscious possession of the petitioner. The petitioner has no concern with the alleged recovery. The petitioner has one criminal antecedent as stated in para 3 of the bail petition. The petitioner is in custody since 03.09.2022.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that total 121.407 kgs of *Ganja* was recovered from the said vehicle which is of commercial quantity. The petitioner had no valid authorization for keeping the said contraband. As per Letter No. 05 dated 03.09.2024 has stated that the argument on behalf of all defendents has already been concluded and now the case is fixed for argument for prosecution. The petitioner was apprehended on the spot and the said contraband was recovered from the conscious possession of the petitioner while the case of the petitioner is on different footing to that of the co-accused persons who have already been granted bail by the co-ordinate bench of this court *vide* order dated 12.04.2023 passed in Cr. Misc. No. 6870 of 2023 as they were not apprehended on the



spot and nothing has been recovered from the conscious possession of the co-accused persons while the petitioner and the other co-accused were travelling in the said Bolero vehicle with the seized contraband.

6. As per Section 37 of the N.D.P.S. Act, the two conditions are that the Court should be satisfied with:-

(i) There are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) He is not likely to commit any offence while on bail.

If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail. The Court is of the opinion that the parameters of bail available under Section 37 of the Act have not satisfied in the facts of the instant case.

7. The Hon'ble Supreme Court in the case of **Narcotics Control Bureau v. Mohit Aggarwal 2022 SCC OnLine SC 891** has held that “The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the N.D.P.S. Act.”



8. Considering the aforesaid facts and circumstances of the case as well as the recovery of commercial quantity of *Ganja* i.e. 121.407 kgs from the conscious possession of the petitioner, I am not inclined to enlarge the petitioner on bail.

9. Learned court below is directed to conclude the trial of the petitioner at the earliest.

10. The application stands rejected.

(Chandra Prakash Singh, J)

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