

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50725 of 2023

Arising Out of PS. Case No.-268 Year-2023 Thana- RAXAUL District- East Champaran

1. Ram Nath Patel @ Dev Nath Prasad @ Dev Nath Prasad Kurmi Son Of Daroga Rawat Resident Of Village- Birganj P.S Virta District Parsa (Nepal)
2. Birendra Mahto @ Virendra Mahto Son Of Ram Chandra Mahto Resident Of Village- Birganj, Ps- Virta, Dist- Parsa (Nepal)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rakesh Kumar No.1, Advocate
For the Opposite Party/s : Mr. Atul Chandra, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL ORDER

8 03-05-2024 Heard learned counsel for the petitioners and learned
APP for the State.

2. The petitioners seek regular bail in connection with Raxaul (Hariya) P.S. Case No. 268 of 2023, registered for the offence punishable under Sections 21 (b) of the NDPS Act.

3. As per prosecution case, the informant- Vijay Kumar, SI/GD. SSB. 47th BN. Pantoka, Raxaul (Bihar) has filed a written petition before S.H.O. Haraiya Police Out Post, Raxaul P.S. stating therein that on 06-06-2023 at about 04:00 hours, the informant received information that at about 05:30 hours, some persons will go to Nepal from India carrying some contraband medicines on their head through Indo- Nepal Border Pillar No. 391/34 and the informant constituted a raiding party and proceeded from his office with other officials and reached there and started watching. After some times, some persons have been



seen coming from India towards Nepal side carrying some goods on their head. The members of raiding party said those persons to stop there, but those persons started fleeing away carrying goods on their head. The raiding party chased them and two persons were apprehended with goods carrying on their head and one person succeeded fleeing away towards Nepal side after throwing goods from his head. The apprehended two accused persons disclosed their names as (1) Ram Nath Patel and (2) Birendra Mahto before Informant. When the informant asked from both the apprehended accused persons about search of their goods, they became ready for search before the Gazetted Officer and thereafter the informant requested his Assistant Commandant Sri Gulab Kumar Chaudhary, who came there and in presence of Assistant Commandant and independent witnesses, search has been made and contraband medicines (1) TRAMADUS- 12,600 Strips valued at Rs. 6,55,200/ (2) TRAMATAS- 2140- Strips, valued at Rs. 1,20,075/- and (3) TRAMAWEL- 1180 Strips, valued at Rs.59,708/- kept in cartons and plastic bags were recovered from the possession of both the apprehended accused petitioners. Accordingly, seizure list and other relevant papers have been prepared. The total quantity of contraband medicines recovered is 15,920 strips



(each 50mg) valued 8,34,983/- and they could not produce any valid documents to carry the said quantity of contraband.

4. The learned counsel for both the petitioners has submitted that these two petitioners are innocent and they have committed no offence, as alleged in the FIR. It is further submitted that the real fact is that both the petitioners were going to their house after purchasing daily use articles and in the way, on mere suspicion both petitioners have been arrested by the police and both petitioners are in Judicial custody since 07-06-2023.

5. Learned counsel for the petitioners further contended that only psychotropic substance contained in the contraband is required to be taken into consideration while determining quantity of prohibited drug i.e. Tramadol Hydrochloride and not the whole of the mixture contained in the strips.

6. Learned APP for the State vehemently opposed the prayer for bail of the petitioners and submitted that the total recovery is more than commercial quantity under the NDPS Act and 'Tramadol' was declared a psychotropic substance vide gazette notification S.O.1761(E) dated 26.04.2018, notified all the medicines or medicinal preparation containing the Tramadol Hydro-chloride medicinal ingredients to be intoxicants for the



purpose of aforesaid act.

7. To determine as to whether the petitioners was in actual possession of commercial quantity of Tramadol, it is relevant to refer to the notification specifying small and commercial quantity for the purpose of the Act S.O. 1055 (E) dated 19th October, 2001 published in Gazette of India, Extra Part-II, Section 3 (ii) dated 19th October, 2001, as amended on 26.04.2018. As per entry 110Y of the list, small quantity of Tramadol is defined as 5 gram and a commercial quantity of Codeine is defined as 250 grams.

8. The scheme of NDPS Act provides graded sentences for possession of small, intermediate and commercial quantities of narcotic drugs or psychotropic substances. Therefore, the penalties or the sentencing has a direct nexus with the amount of contraband psychotropic substance.

9. The judgment of Hira Singh vs. Union of India (AIR 2020 SC 3255) squarely covers the issue and the Hon'ble Supreme Court held that total weight of the manufactured drug or preparation including the neutral material is required to be considered while determining small quantity or commercial quantity.

10. In Hira Singh (supra), the three Judge Bench of



the Hon'ble Supreme Court had held thus: -

“In case of seizure of mixture of Narcotic Drugs or Psychotropic substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the “small or commercial quantity of Narcotic Drugs or Psychotropic Substances.”

11. The Hon'ble S.C. in the order dated 17.11.2022 in Intelligence Officer, Thiruvananthapuram vs. Naushad K.K. & Ors. (2022 Livelaw (SC)978) Cr. App. No. 1726 of 2019 reiterated that neutral substance quantity cannot be ignored while labeling the quantity of contraband recovered on 'small quantity' or commercial quantity. "There is no cavil to the issue that the judicial pronouncement now settles the issue in "Hira Singh & Anr. vs. Union of India & Anr." reported as 2020 SCC online SC 382 opining that the decision of this Court relied upon in impugned order "E. Micheal Raj vs. Intelligence Officer, Narcotic Control Bureau (2008) 5 SCC 161" is no more good law and in determining as to what is the quantity, the neutral substance quantity is not be ignored".



12. In view of the gravity of the consequences of drug trafficking, the offences under the NDPS Act have been made cognizable and non-bailable. To prevent the devastating impact on the people of nation, parliament in its wisdom deemed it fit to introduce stringent conditions for grant of bail under the Act. Since the crime is an act against the society, the legislature has contemplated that public prosecutor must be given an opportunity to oppose the bail application under the Act. Additionally, under Section 37 (b) (ii) of the NDPS Act, the Court is not required to be satisfied about the dual conditions i.e. prima facie opinion of the innocence of the accused and that the accused will not commit a similar offence while on bail, but the court must have “reasonable grounds” for such satisfaction. The standard of satisfaction in such cases is more than satisfaction on a prima facie opinion.

13. The petitioners at this stage cannot be presumed to be ‘not guilty’ of the offence that they are charged with. Since this Court is not satisfied on this ground, there is no question to consider that the petitioners will not commit the offence while on bail.

14. On perusal of FIR, seizure list, FSL report as well as case diary and impugned order dated 06.07.2023, it appears



that the quantity of Tramadol seized from the petitioners comes under the commercial quantity being 796 gram (15,920 x 50mg) which is much more than commercial quantity for Tramadol (mention in Sr. No. 110Y of the Table) as the quantity seized shall apply to the entire mixture or solution and there are no reasonable grounds to presume that petitioners are not guilty of offence. The Hon'ble Supreme Court in the case of **State by Inspector of Police vs. B. Ramu arising out of SLP (Cri.) No. (s). 8137 of 2022**, cautioned that in case of recovery of huge quantity of narcotics substance, the Courts should be slow in granting bail to the accused. Accordingly, this is not a fit case where the petitioners to be granted bail.

15. Accordingly, the prayer for bail of the above named petitioners is hereby rejected.

16. It is made clear that both the petitioners are foreigners and are citizens of The Federal Democratic Republic of Nepal and if they are granted bail, then it will be very difficult to procure the attendance of the petitioners for trial of the case.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

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