

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62648 of 2024

Arising Out of PS. Case No.-830 Year-2023 Thana- MUFFASIL District- West Champaran

Abdul Gani @ Abdul Gani Miyan, aged about 40 years, Male, Son of Faij Miyan @ Faijal Miyan @ Fajal Miyan, R/O Village- Sakaraul, P.S.- Inarwa, Dist- West Champaran.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Bimlesh Kumar Pandey, Advocate
For the Opposite Party : Mr. Md. Fahimuddin, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 19-09-2024 Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. The petitioner seeks bail in connection with Bettiah (Muffasil (Manuapul) P.S. Case No. 830 of 2023 dated 27.12.2023 registered for the offences punishable under Section 414 of the I.P.C., and Sections 8, 20(b)(ii)(C), 23(c) and 29 of the N.D.P.S. Act.

3. As per prosecution case, the informant seized two motorcycles. one motorcycle bearing Registration No. BR22BD1672 was driven by the co-accused Kasim Alam and on search, 05 kg., *charas* was recovered from the *dickey* of the said motorcycle and another motorcycle bearing BR22AH7252 was driven by Abdulgani Mian (petitioner) and the co-accused



Balister Miyan was a pillion rider and on search, 05 kg., *charas* was also recovered from the *dickey* of the said motorcycle.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in the present case. It is submitted that no incriminating article has been recovered from the conscious possession of the petitioner. The petitioner has no concern either with the alleged recovered *charas* or with the motorcycle in question. The petitioner had no knowledge of the said contraband. The petitioner was only driving the said Motorcycle in question. It is further submitted that the petitioner has also no nexus with other co-accused persons who were apprehended with the Motorcycles in question. It is further submitted that from perusal of the F.I.R. and the seizure list, it would appear that the police is not sure as to whether the so-called article was '*Charas*' or not, since the police has mentioned about the article to be '*Charas like substance*'. It is further submitted that the petitioner has falsely been implicated in the present case by police only because he did not agree to sign over a blank paper to be a witness of the so-called seizure list, as desired by the informant. However, the informant subsequently obtained the petitioner's signature forcefully on the seizure list. The petitioner was going to meet



one of his relatives but the informant detained him and asked him to be involved in the seizure process and when he expressed his inability, the informant became rancorous and implicated him in the present case. It is further submitted that the police has submitted incomplete charge sheet without obtaining F.S.L. report and the same would not be considered to be a valid charge sheet. It is further submitted that the other co-accused person, namely, Balister Miyan has already been granted bail by a Bench of this Court vide Cr. Misc. No. 39142 of 2024 under order dated 10.07.2024, annexed as Annexure-2 to the present bail application. The petitioner has clean antecedent as stated in paragraph no. 3 of the bail application. The petitioner is in custody since 28.12.2023.

5.Learned A.P.P. for the State has opposed the prayer for bail petition of the petitioner and submitted that the motorcycle bearing BR22AH7252 being driven by the petitioner and the co-accused Balister Miyan was a pillion rider and on search, 05 kg., *charas* was also recovered from the *dickey* of the said motorcycle. The petitioner had no valid authorisation for keeping the aforesaid 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.

7. 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. 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, this Court is not inclined to grant bail to the petitioner and the same is rejected in connection with Bettiah Muffasil (Manuapur) P.S. Case No. 830 of 2023, pending in the court of learned Exclusive Special Judge, N.D.P.S., Bettiah, West Champaran.



9. The application stands rejected.

(Chandra Prakash Singh, J)

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