

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59146 of 2024

Arising Out of PS. Case No.-217 Year-2023 Thana- SURSAND District- Sitamarhi

Vivek Sahni, aged about 21 years (Male), Son of Bijali Sahni, Resident of
Village - Chand Parsa, P.S. - Kesariya, District - East Champaran (Motihari)

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Raju Kumar, Advocate

For the Opposite Party : Mrs. Sharda Kumari, A.P.P.

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

ORAL ORDER

2 31-08-2024 Heard learned counsel for the petitioner and learned
A.P.P for the State.

2. The petitioner seeks bail in connection with
Sursand P.S. Case No. 217 of 2023 dated 30.04.2023 registered
for the offence punishable under Section 414 of the I.P.C. and
Sections 8(C), 20(b)(ii)(C) and 29 of the N.D.P.S. Act.

3. As per the prosecution case, while the informant
along with other police officials was on patrolling duty at NH
227 and was checking the vehicle, a four wheeler came from the
side of *Bhitha More* which was stopped by the informant. On
search, 02 kg *charas*, mobile phones and cash were recovered
from the seized vehicle i.e., Mahindra SUV and the petitioner
and the co-accused persons were found sitting inside the said



vehicle.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioner. It is further submitted that the police took the signature of the petitioner on a plain paper forcibly and later on converted it into seizure list, hence, it is cook and bull story hatched up by the prosecution party. It is further submitted that the alleged contraband article has been recovered from a *Mahindra SUV* vehicle and the petitioner is neither the owner nor the driver of the said vehicle. It is further submitted that the sample of alleged recovered contraband was sent to F.S.L. for its chemical and forensic examination but police officials without awaiting the report from the F.S.L., has implicated the petitioner in the present false case. It is further submitted that in absence of any expert report from the F.S.L., the allegation under the N.D.P.S. Act is not applicable against the petitioner and the implication of the petitioner in the present case is bad in law. There is no statutory compliance under Section 50 of the N.D.P.S. Act and there is no independent witness of the alleged seizure. The petitioner is a sole bread earner of his family. The petitioner has three criminal



antecedents and in two cases, he is on bail as stated in para 3 of the bail petition. The petitioner is in custody since 01.05.2023.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner. It is further submitted that the petitioner was one of the occupants of the said vehicle and was arrested on the spot. It is further submitted that the bail application of the other co-accused Ajay Kumar Sahni has already been rejected by a Bench of this Court vide Cr. Misc. No. 33798 of 2024 under order dated 14.05.2024. It is further submitted that the seized contraband is commercial quantity i.e., 2 kgs of *charas*. The petitioner had no any valid authorisation for the said 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.

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.”

7. Considering the aforesaid facts and circumstances of the case as well as the finding substance in the contention of learned counsel for the State and the recovery of commercial quantity from the conscious possession of the petitioner, this Court is not inclined to grant bail to the petitioner and the same is rejected in connection with Sursand P.S. Case No. 217/2023 pending in the court of learned Sessions Judge, Sitamarhi.

(Chandra Prakash Singh, J)

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