

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59762 of 2024

Arising Out of PS. Case No.-77 Year-2024 Thana- HARSIDHI District- East Champaran

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Ajay Manjhi S/O Banu Manjhi @ Banhu Manjhi R/O Harsidhi Musahari
Tola, Ward No.4, P.S.- Harsidhi, District- East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Krishna Kant Singh

For the Opposite Party/s : Ms.Meena Singh

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 06-09-2024 Heard Mr. Krishna Kant Singh, learned Advocate for
the petitioner and the learned APP for the State.

2. The petitioner seeks grant of regular bail, who is in custody in connection with Harsidhi P.S. Case No. 77 of 2024 registered for the offences punishable under Sections 20(B) (ii) (C)/22(C)/23(C) of the Narcotic Drugs and Psychotropic Substances Act and Section 30(a) of the Bihar Prohibition and Excise Act.

3. The police, on a tip off trafficking of illicit wine, conducted raid in the house of the petitioner. Noticing the police party, out of four persons, two of them succeeded in fleeing away, however, two of them were apprehended. In course of search, two yellow colour polythene packets containing *charas*



like substance were recovered. It is also alleged that from the house of co-accused Premi Lal 150 litres spirit was also recovered. *Charas* like substance was weighed and it was found containing 500 gm each total 1 kg., which was marked as p-1 and p-2.

4. Learned Advocate for the petitioner, referring to the FIR, submitted that the FIR clearly suggests that the alleged recovery has been made from a motorcycle and the petitioner is said to be the owner of the motorcycle. The FIR further reveals that weight has been measured along with polythenes and even if it is taken to be true, it comes to 1 kg. Thus, in view of the notification issued by the Central Government dated 19.10.2001, the same does not fall under the commercial quantity. Taking note of the notification of the Central Government and the decision of some of the High Courts, one of the co-accused person namely, Pyaare Khalifa, against whom there is one criminal case pending, was allowed the privilege of regular bail in Cr. Misc. No. 32503 of 2024 *vide* order dated 31.07.2024, copy of which has been produced before this Court.

5. Adverting to the aforesaid notification, learned Advocate for the petitioner further submits that the alleged recovered *charas* like substance is less than commercial



quantity and, as such the rigors provided under Section 37 of the NDPS Act requiring compliance of twin principle is not applicable. It is further contended that the only thing against the petitioner is of three criminal antecedent, however, the petitioner is on bail in all three cases, as has been mentioned in paragraph-3. It is next contended that the petitioner undertakes that he shall remain present on every date of the trial after its commencement. Now the petitioner has been incarcerated since 18.02.2024.

6. On the other hand, learned Advocate for the State vehemently opposes the application and submits that the huge quantity of *charas* has been recovered from the motorcycle of the petitioner and his complicity cannot be denied.

7. Regard being had to be submissions made on behalf of the parties and in view of the notification issued by the Central Government, the contraband recovered in the present case does not fall within the definition of commercial quantity as in order to bring the quantity under the category of commercial, in case of recovery of *charas*, it should be more than 1 kg.; as also the fact that the charge-sheet has been submitted without there being any FSL report and there are other infirmities in the search and seizure, coupled with the period of



custody, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs. 25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Exclusive Special Excise Court No. 1, East Champaran at Motihari in connection with Harsidhi P.S. Case No. 77 of 2024, subject to the condition that one of the bailors will be the close relatives 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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