

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74436 of 2023

Arising Out of PS. Case No.-20 Year-2008 Thana- CUSTOM (GOVERNMENT OFFICIAL)
District- Patna

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OSHIHAR KUMAR SRIVASTAVA S/O PARAS NATH SRIVASTAVA
VILLAGE- BARI RAYBHAN, PS. HATHUA, DIST. GOPALGANJ

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR BIHAR
2. THE UNION OF INDIA INDIA

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Satyapal Singh, Adv.

For the Opposite Party/s : Mr.Jai Narain Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

7 09-07-2024 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 Special (N.D.P.S.) Case No. 16 of 2009 (NDPS) dated 16.03.2009 registered for the offence punishable u/s 8, 20, 23 of the N.D.P.S. Act.

3. As per the prosecution case, total 260 Kgs. Nepali ganja was recovered from the two Bolero vehicles. It is further alleged that the driver along with other managed to escape under the cover of the firing and darkness of the night.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The petitioner is not named in the F.I.R. The name of the petitioner has sprung up in the confessional statement of the co-accused, Manoj



Kumar Baitha. The petitioner is the owner of one of the seized vehicles bearing Reg. No. BR-52-9291. It is further submitted that the petitioner has no concern with the alleged recovery. The petitioner has two criminal antecedents as stated in para 3 of the supplementary affidavit filed on behalf of the petitioner. The petitioner is in custody since 18.04.2023.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner. It is further submitted that the seized contraband is commercial quantity which was recovered from the vehicle of the petitioner i.e., 124.400 Kgs Nepali *ganja*. 133.600 Kgs. Nepali *ganja* was also recovered from the another vehicle.

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.”

6. 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 Special (N.D.P.S.) Case No. 16/2009, Unit Case No. 20/2008, pending in the court of learned Sessions Judge/Special Judge (N.D.P.S.), Patna.

7. Learned Trial Court is directed to expedite the trial and conclude the same preferably within a period of 9 months.

8. The application stands rejected.

(Chandra Prakash Singh, J)

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