

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70922 of 2024

Arising Out of PS. Case No.-3 Year-2019 Thana- DHANGAI District- Gaya

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BISHUN YADAV @ VISHUNDER YADAV @ VISHUNDEV YADAV,
Male, aged about 47 years, SON OF KISHUN YADAV R/O VILL.-
DHANAWAN, P.S.- BARACHATTI, DIST.- GAYA.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kr. Sinha, Advocate

For the Opposite Party/s : Ms. (Dr.) Indihar Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 13-12-2024 Heard Mr. Sanjay Kr. Sinha, learned counsel

 appearing on behalf of the petitioner and Ms.(Dr.) Indihar

 Kumari, learned APP for the State.

2. The petitioner seeks pre-arrest bail in connection
with Dhangai P.S. Case No.03 of 2019 registered for the offence
punishable under Sections 08/15/18(c)/25 of the NDPS Act.

3. Prosecution story, in brief, is that as per the written
report of the informant S.I. Vidya Sharan Sah on 05.03.2019, a
team was constituted for the destruction of cultivated opium
plant at village- Barsudi. It is further alleged that informant got
information that accused/petitioner along with other co-accused
persons, who belong to another place, were suspected to be
engaged in illegal cultivation of opium. On this information, the



police party reached at village- Barsudi and destroyed 08 acres of illegal cultivation of opium over different plots. A sample of opium plant was recovered and seizure list was prepared accordingly.

4. Learned counsel appearing on behalf of the petitioner submitted that the alleged place of occurrence, where the opium plant were cultivated, is in the forest area. The petitioner belong to Barachatti police station and the place of occurrence is Barsudi police station, which is in forest area. The forest area is heavily guarded by the forest officers, but since the illegal cultivation of poppy came to the knowledge of general-public, the petitioner, who is from another village, was made accused merely on the basis of suspicion in the present case by the informant. The informant is a police officer and he has not named any forest officials, after being informed that the poppy plants were being cultivated in the forest area, as it appears from the FIR. He further submitted that other similarly situated co-accused persons have already been released on bail by this Court vide Annexure 2 series. No material has been collected against the petitioner. On these grounds, petitioners seek to be released on pre-arrest bail.

5. Learned APP for the State has vehemently opposed



the prayer for grant of pre-arrest bail, however, he admits that the forest officials has not been named in the FIR.

6. Considering the rival submissions made on behalf of the parties, as well as, the allegations made in the FIR, which is on the basis of secret information gathered by the informant, who is a police officer, it has not been disclosed in the FIR whether such information was given to the informant by any of the forest officer, rather it appears that without obtaining the direction of the concerned competent authority, steps were taken by the police. Suspicion has been raised against the petitioner's involvement in the alleged offence of cultivation of poppy plants in the forest area. No recovery has been made from the house of the petitioner and the petitioner has been made accused in the present case on the basis of suspicion, the law is well settled in this regard that a strong suspicion, howsoever, cannot take the place of proof and for suspicion and under-trial cannot be kept behind the bar, even after completion of investigation. I am of the opinion that petitioner has, *prima facie*, made out a case to be released on pre-arrest bail.

7. The petitioner, above named, is directed to be released on pre-arrest bail, in the event of his arrest or surrender before the learned District Court within a period of four weeks



from today, on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge-cum-Special Judge, NDPS Act, Gaya in connection with Dhangai P.S. Case No.03 of 2019, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

8. The learned District Court is directed to verify the criminal antecedent of the petitioner and if it is found that the petitioner is involved in some other cases, as what has been stated in paragraph no.3 of the bail application, this order will automatically lose its force.

(Purnendu Singh, J)

Sanjay/-

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