

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72196 of 2023

Arising Out of PS. Case No.-524 Year-2023 Thana- MOTIHARI MUFASIL District- East
Champaran

=====

Dharmendra Kushwaha Male aged about 30 years S/O Parmanand Kushwaha
@ Parmanand Mahto Koyri R/O Village- Bariyarpur, Ward No. 02, Garhimai,
P.S- Kalaiya, Distt.- Bara Nepal.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

with

CRIMINAL MISCELLANEOUS No. 72409 of 2023

Arising Out of PS. Case No.-524 Year-2023 Thana- MOTIHARI MUFASIL District- East
Champaran

=====

Jalandhar Kumar, Male, aged about 27 years, S/O Kapildeo Prasad Yadav,
Resident of Village- Chhota Pakahi, Ward No. 14, P.O.-Majirwa, PS.
Lakhaura, Dist. East Champaran

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

=====

with

CRIMINAL MISCELLANEOUS No. 72884 of 2023

Arising Out of PS. Case No.-524 Year-2023 Thana- MOTIHARI MUFASIL District- East
Champaran

=====

Sujeet Kumar Male aged about 29 years, Son Of Arjun Prasad Yadav @ Arjun
Prasad, male, Resident Of Village - Chota Pakhi, P.S. - Lakhaura, District -
East Champaran

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

=====

Appearance :

(In CRIMINAL MISCELLANEOUS No. 72196 of 2023)

For the Petitioner/s : Mr. Subodh Kumar Mishra, Advocate

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

(In CRIMINAL MISCELLANEOUS No. 72409 of 2023)

For the Petitioner/s : Mr. Suman Kumar Verma, Advocate



For the Opposite Party/s : Mr. Sunil Kumar Verma, Advocate
Mr. Anish Kumar, Advocate
Mr. Amresh Kumar Mishra, Advocate
(In CRIMINAL MISCELLANEOUS No. 72884 of 2023)
For the Petitioner/s : Mr. Rita Verma, APP
Mr. Suman Kumar Verma, Advocate
Mr. Sunil Kumar Verma, Advocate
Mr. Anish Kumar, Advocate
Mr. Amresh Kumar Mishra, Advocate
For the Opposite Party/s : Mr. Rita Verma, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL ORDER

5 10-04-2024 Heard learned counsels for the petitioners and
learned APP for the State.

2. The petitioners seek regular bail in connection with Motihari Muffaasil (Lakhaura) P.S. Case No. 524 of 2023 registered for the offence punishable under Section 414 of Indian Penal Code and Sections 8 and 20(b)(ii)(c) of the NDPS Act.

3. As per averment of the F.I.R. the case of the prosecution is that on 24-07-2023 at about 19:00 hours the informant was checking the vehicles at Narayan Chowk, in the mean-time one rider on the motor-cycle came from side of Chhauradano carrying one black color bag on his back, who seeing the police force tried to flee-away from there after turning his motor-cycle, but on chase he was apprehended by the police. In the mean-time one white color Safari vehicle and one white color pick-up van came there from side of



Chhauradano and rider of the motor-cycle gave signal by his hand to driver of both the vehicles to return-back, but on suspicion, both the vehicles were apprehended by the police. In Safari vehicle three persons including driver were sitting and in pick-up van only driver was sitting. On query, rider of the motor-cycle disclosed his name as Sujeet Kumar, the driver of Safari vehicle disclosed his name as Shiv Balak Sah and other two persons, who were sitting in Safari vehicle disclosed their names as Dharmendra Kushwaha and Manoj Kumar Sah. The driver of pick-up van disclosed his name as Jalandhar Kumar. In presence of the witnesses, during the course of search seven packets charas each containing 500 grams, in total 3.5 kg (3 kilo 500 grams) charas has been recovered from the bag of rider of motor-cycle passion pro bearing registration no. BR 051-9533, namely, Sujeet Kumar. From Safari vehicle bearing its Registration No. DL8CM-9494 16 packets, each containing 500 grams, in total 8 Kilograms charas have been recovered. From Pick-up van bearing its Registration No. BR 05GA-1272 six bundles weighing 36.2 Kg (36 Kilo 200 grams) Ganja have been recovered. The papers with respect to recovered charas, ganja, motor-cycle, safari vehicle and pick-up van were demanded from apprehended accused persons, but they could not produce



any paper. On further query, the apprehended accused persons disclosed that they are carrying recovered charas and Ganja from Nepal and they are going to Delhi to sell the same on higher price.

4. Learned counsel for the petitioner Dharmendra Kushwaha submitted that petitioner namely Dharmendra Kushwaha is not the driver nor the owner of the said Safari vehicle, and is innocent and has committed no offence alleged. He further submits that petitioner has taken lift and as such was sitting beside the driver along with other co-accused and has been falsely implicated in this case and allegation against the petitioner is baseless, false and concocted without any rhyme and reason. He further submits that petitioner name has come merely on the confessional statement of the other co-accused and there is no independent witness to support the prosecution case and petitioner has no concern with the alleged seized article nor he is beneficiary, hence prayed for release of the petitioner on bail. The learned counsel for the petitioner has referred **Union of India vs Mohanlal & Anr. in Cr. Appeal No. 652 of 2012.**

5. Learned counsel for the petitioners Jalandhar Kumar and Sujeet Kumar submitted that these two petitioners



are innocent and they have committed no offence, as alleged and they have falsely been implicated in this case due to local politics and nothing has been recovered from the conscious possession, case hence the prayer for release of both the petitioners on bail.

6. Learned APP vehemently opposed the instant bail petition. He has further submitted that the materials on record clearly shows that the petitioners along with other co-accused persons were apprehended on the spot with seized article. It is further submitted that as per FSL report, the seized article has been found to be Charas and Ganja. He further submitted that the total recovery of seized article is more than commercial quantity under the NDPS Act and one co-accused regular bail has been rejected by the co-ordinate bench of this court in Cr. Misc. No. 76562 of 2023.

7. To determine as to whether the petitioner was in actual possession of commercial quantity of Charas and Ganja, it is relevant to refer to the notification specifying small and commercial quantity for the purpose of the Act S.O. 1055 (E) dated 19th October, 2001 published in Gazette of India, Extra Part-II, Section 3 (ii) dated 19th October, 2001, as amended on 18.11.2009. As per entry 23 and 55 of the list, small



quantity of Charas is defined as 100 gram and a commercial quantity of Charas is defined as 1kg and small quantity of Ganja is defined as 1000 gram and a commercial quantity of Ganja is defined as 20 Kg.

8. The scheme of NDPS Act provides graded sentences for possession of small, intermediate and commercial quantities of narcotic drugs or psychotropic substances. Therefore, the penalties or the sentencing has a direct nexus with the amount of contraband psychotropic substance.

9. In view of the gravity of the consequences of drug trafficking, the offences under the NDPS Act have been made cognizable and non-bailable. To prevent the devastating impact on the people of nation, parliament in its wisdom deemed it fit to introduce stringent conditions for grant of bail under the Act. Since the crime is an act against the society, the legislature has contemplated that public prosecutor must be given an opportunity to oppose the bail application under the Act. Additionally, under Section 37 (b) (ii) of the NDPS Act, the Court is not required to be satisfied about the dual conditions i.e. prima facie opinion of the innocence of the accused and that the accused will not commit a similar offence while on bail, but the court must have “reasonable grounds” for such satisfaction.



The standard of satisfaction in such cases is more than satisfaction on a prima facie opinion.

10. The petitioner at this stage cannot be presumed to be 'not guilty' of the offence that he is charged with. Since this Court is not satisfied on this ground, there is no question to consider that the accused will not commit the offence while on bail.

11. On perusal of FIR, seizure list, FSL report as well as case diary and impugned order dated 25.08.2023, it appears that the quantity of Charas and Ganja seized from the petitioners recovered from different vehicles in which the petitioners were present and was taken into custody on the spot, the same comes under the commercial quantity being 11.5 Kg (Charas) and 36.2 Kg. (Ganja), which is much more than commercial quantity for Charas and Ganja (mention in Sr. No. 23 and 55 of the Table) as there are no reasonable grounds to presume that petitioner is not guilty of an offence and, accordingly, this is not a fit case where the petitioners to be granted bail.

12. The case cited by the learned counsel for the petitioner is not helpful at the current stage of the present case. The quantity of the seized substance is the main issue in



question and the quantity seized by the authorities is way above the commercial quantity. The judgment cited above only provides for the directions as to how to do sampling of the seized substance under supervision of the magistrate, storage facility for substances that are seized by government agencies and its disposal.

13. Accordingly, the prayer for bail of the above named petitioners is hereby rejected.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

U		T	
---	--	---	--

