

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.83316 of 2023

Arising Out of PS. Case No.-333 Year-2023 Thana- BATHNAHA District- Sitamarhi

Nijamuddin S/O Ash Mohammad Village- Jhakhia, Ward No. 09, Ps. Banjariya, Dist. East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Adv.
		Mr. Dhannjay Kumar No 2, Adv.
For the Opposite Party/s	:	Ms. Renu Kumari, APP

CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL ORDER

7 08-05-2024 Heard learned counsel for the petitioner and learned APP for the State. Perused the case diary.

2. The petitioner seeks bail in connection with Bathnaha P.S. Case No. 333 of 2023 instituted for the offences under Sections 8, 20(ii)(C), 22(C)23(C) of the N.D.P.S. Act.

3. As per prosecution case, the police has recovered total 363 Kgs. 800 Gms. *Ganja* from two vehicles i.e. Container Truck and the Scorpio.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence as alleged against him and has falsely been implicated in the present case due to village enmity. The petitioner has no concern with the alleged recovery of the contraband or the alleged vehicles and



has falsely been implicated on the basis of suspicions. The Scorpio and the Container do not belong to the petitioner. Learned counsel for the petitioner submits that the without F.S.L. report of the contraband, the Informant has declared the substance as *Ganja*. The charge-sheet has also been submitted in this case in absence of the report of the Forensic Science Laboratory. The petitioner has two criminal antecedents and is languishing in judicial custody since 08.08.2023 without any rhymes or reason.

5. On the other hand, learned A.P.P. for the State has vehemently opposed the prayer for grant of bail to the petitioner stating that huge quantity of *Ganja* has been recovered from the vehicles. The quantity of recovered contraband is above the commercial quantity and, thus, there is bar under Section 37 of the N.D.P.S. Act. The petitioner has criminal antecedent. The allegation alleged against the petitioner is serious in nature and, thus, he does not deserve bail.

6. Learned counsel for the State has further submitted that similar matter is pending consideration before the Hon'ble Supreme Court of India in *SLP (Crl.) No. 15293 of 2023 [Hanif Ansari Vs. State (Govt. of NCT of Delhi)]* and the same has been placed before the larger Bench to decide the question as to



whether failure on the part of the prosecution to include the F.S.L. report pertaining to the seized contraband article(s) along with the chargesheet, within the time specified in Section 167(2) of the Code read with Section 36A of the NDPS Act, would entitle the accused to default bail or not. Accordingly, the matter was tagged with SLP (Crl.) No. 5724 of 2023.

7. Having heard rival contention of both the parties and considering the entire facts and circumstances of the case and keeping in view the aforesaid matter being pending adjudication before the Hon'ble Apex Court, this Court is not inclined to grant bail to the petitioner at this stage.

8. Accordingly, the prayer for bail of the petitioner, above named, is rejected with a liberty to the petitioner to renew his prayer for bail before the court below after disposal of the aforesaid SLP (Crl.) No. 5724 of 2023.

(Rudra Prakash Mishra, J)

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