

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.69137 of 2024

Arising Out of PS. Case No.-48 Year-2024 Thana- SAHEBPUR KAMAL District- Begusarai

Mangi Lal Purohit @ Mangilal Rajpurohit, Son of Late Bhura Ram Rajpurohit, Resident of Mohalla- Near Thakurji Mandir, Toliyasar, P.S.-Sri Dungargarh, District- Bikaner (Rajasthan), at present Area Manager of East India Transport Agency, Sikanderpur Road, P.S.-Sadar, District- Muzaffarpur, (Bihar).

... .. Petitioner

Versus

1. The State of Bihar
2. The Union of India through N.D.P.S.
3. Deepak Kumar, Son of Kailash Prasad Das, Police Officer posted as S. Kamal P.S., P.S.- S. Kamal, Dist.- Begusarai.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Nachiketa Jha, Advocate
For the Opposite Party	:	Mr. Shailendra Kumar Singh, Advocate
For the State		Mr. Jharkhandi Upadhaya, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 28-01-2025

The present application has been filed by the petitioner for setting aside the order dated 27.08.2024 passed in N.D.P.S. Case No.11 of 2024 arising out of Sahebpur Kamal P.S. Case No.48 of 2024 dated 27.02.2024 registered for the offences punishable under Sections 120-B read with 34 of the Indian Penal Code (for short 'IPC') as well



as Sections 8, 20, 22 of the Narcotic Drugs and Psychotropic Substances Act (for short 'N.D.P.S. Act'), whereby the learned trial court has rejected the prayer of the petitioner to release the seized 640 packets, total weight 32 M.T. natural rubber in his favour, which was seized in connection with aforesaid case.

2. The prosecution case is based on the self-statement of one Deepak Kumar, Police Officer, posted at Sahebpur Kamal Police Station, alleging inter alia therein that on 26.02.2024 at 22:45 A.M., he received information from his Senior Officer that *ganja* smugglers through a truck bearing Registration No. RJ19GH-9418 are carrying *ganja* and going towards Begusarai through N.H.-31 from Khagaria. He informed the Circle Officer of Sahebpur Kamal Police Station and requested him to be present at old Thana building at N.H.-31 and went there with Police personnels. At 22:55, a truck bearing Registration No. RJ19GH9418 was found coming in which two persons were found sitting therein, truck was asked to stop. Thereafter, the truck was searched before the two members of the raiding team due to non-availability



of the independent witnesses in night, total 400 kg *ganja* in 20 packets and two mobiles were seized before the Circle Officer of Sahebpur Kamal. A copy of the same was given to the arrested persons.

3. Natural rubber was also found loaded on the container and the alleged contraband i.e. *ganja* was said to be kept in specially built chamber of the vehicle. The quantity of rubber was 32 M.T., whereas the quantity of contraband was 400 kgs.

4. A petition for release of aforesaid natural rubber was filed before learned A.D.J.-1-cum-Special Judge, N.D.P.S. Begusarai, where it was rejected by considering the provisions of “culpable mental state” as available under Section 35 of the N.D.P.S. Act and also by taking note of Sections 60 and 61 of the N.D.P.S. Act, as the vehicle in issue was used for carrying contraband i.e. *ganja*.

5. It is submitted by learned counsel appearing for petitioner that no confiscation proceeding is pending and moreover, the owner of rubber is not an accused in present case, where after the investigation, the police has already



submitted charge-sheet on 09.04.2024.

6. It is submitted that petitioner is an Area Manager of M/s. East India Transport Agency, who booked 640 packets of natural rubber to transport the same from Agartalla to Jalandhar (Ludhiana) through Truck No. RJ19GH-9418. It is submitted that the Driver-cum-owner and cleaner of the truck concealed the recovered contraband i.e. *ganja* in the truck for their own interest, which was seized by the police for which the owner of natural rubber nowhere liable and it cannot be said that any *prima facie* case is made out against him. Factual aspect of this case also suggest that petitioner was not aware about carrying the illegal consignment as to establish his culpable mental state in view of Section 35 of the N.D.P.S. Act.

7. It is submitted that natural rubber is decaying articles and the same is lying un-cared in the premises of respondents. No useful purpose would be served by keeping it there for any further period. In support of his aforesaid submission, learned counsel appearing for petitioner relied upon the legal report of Hon'ble Supreme Court as available



through **Sunderbhai Ambalal Desai vs. State of Gujarat** as reported in **(2002)10 SCC 283** and also relied upon **General Insurance Council and Ors. vs. State of Andhra Pradesh and Ors.** as reported in **(2010) 6 SCC 768.**

8. *Per contra*, Mr. Jharkhandi Upadhyay, learned APP for State and also learned counsel appearing for Union of India/DRI submitted that Section 60(2) of the N.D.P.S. Act provides for confiscation of the seized articles. The natural rubber was also recovered from the said container from which huge quantity of 400 kg ganja was recovered and, therefore, the natural rubber should not be released in favour of the transporter.

9. Considering the submissions and on perusal of record, it appears that huge quantity of contraband i.e. 400 kgs *ganja* was recovered from the truck bearing Registration No.RJ19GH-9418, where 32 M.T. of natural rubber was loaded. The *ganja* was said to be kept hidden thereof. The investigating agency has not brought any fact before the court that the seized article (natural rubber) is liable for confiscation



or any confiscation proceeding is pending.

10. Accordingly, in view of judgment of the Hon'ble Supreme Court as available through **Sunderbhai Ambalal Desai** (supra), it is incumbent upon the court to release the said articles (natural rubber) forthwith, which is the subject matter of decaying after taking proper security from the owner of the articles. The articles *prima facie* not appears relevant materials for the trial of the case. The huge seized natural rubber, which is of 32 MT is for specific use and also of its own lifetime, failing of which, it cannot be used for the desired purpose.

11. Accordingly, the order dated 27.08.2024 passed in N.D.P.S. Case No. 11 of 2024 arising out of Sahebpur Kamal P.S. Case No.48 of 2024 by learned A.D.J.-I-cum-Special Judge, N.D.P.S. Begusarai is hereby quashed and set aside.

12. The seized article (natural rubber) be released in favour of the petitioner on furnishing proper sureties to the satisfaction of the learned A.D.J.-I-cum-Special Judge, N.D.P.S. Begusarai in N.D.P.S. Case No. 11 of 2024 arising



out of Sahebpur Kamal P.S. Case No.48 of 2024.

13. The application stands allowed.

14. Let a coy of the judgment be communicated to
the learned trial court forthwith for immediate compliance.

(Chandra Shekhar Jha, J)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05-02-2025
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