

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2322 of 2025

Arising Out of PS. Case No.-164 Year-2014 Thana- FATUA District- Patna

=====

Prem Sahani @ Gopal Chaudhary S/o- Kapil Muni Sahani @ Kapil Chaudhary @ Kapil Dev Sahani Resident of Kanti Factory Road, Mahatma Gandhi Nagar, P.S.- Agamkuan, District- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Santosh Kumar, Adv.

For the Opposite Party/s : Mr. Nirmala Kumari, APP

=====

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

3 10-04-2025 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 Fatuha P.S. Case No. 164 of 2014 dated 20.05.2014 registered for the offence punishable u/ss 399 and 402 of the I.P.C. and Sections 25(1-B) (a), 26 and 35 of the Arms Act and Section 3/4 of the Explosive Substance Act and Section 20/22 of the N.D.P.S Act.

3. As per the prosecution case, one country-made pistol, one kilogram of Charas and two live bomb were recovered from the possession of the petitioner.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in



this case. No incriminating article has been recovered from the conscious possession of the petitioner. It is further submitted that charge was framed against the petitioner on 20.06.2023 but no prosecution witnesses have been examined till date. The petitioner has no concern with alleged recovery. The petitioner has 14 criminal antecedents as stated in para 3 of the bail petition. The petitioner is in custody since 22.05.2014 to 21.07.2018 and since 06.05.2022 to up till now as stated in para-4 of the bail petition.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner. The petitioner had no valid authorization for keeping the said contraband. The said seized contraband is of commercial quantity.

6. 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.*”

7. Learned APP for the State has further submitted that vide order dated 18.07.2018, passed in the present case, the petitioner was granted provisional bail in connection with Special Case No. 43 of 2014, arising out of Fatuha P.S. Case No. 164 of 2014, pending in the court of learned A.D.J.-VI-cum-Special Judge (NDPS), Patna, for a period of three weeks from the date of production/receipt of a copy of the order dated 18.07.2018 by the then Co-ordinate Bench of this Court on the ground that the father of the petitioner has died on 10.07.2018 and the petitioner has to participate in the last rites of his late father and a slip to that effect has also been filed by the learned counsel for the petitioner on 13.07.2018 with certain conditions. The petitioner has to surrender positively on or before expiry of



the period of provisional bail but he absconded and could not surrender within the stipulated period for which Agamkuan P.S. Case No. 532 of 2018 was instituted on 28.07.2018.

8. Vide order dated 29.08.2024, a report regarding the date of surrender of the petitioner in the learned court below as well as the present stage of trial in connection with Fatuha P.S. Case No. 164 of 2014 from the court of learned A.D.J.-VI-cum-Special Judge (NDPS), Patna, was called for.

9. In compliance of the aforesaid order dated 29.08.2024, a report has been sent by learned Exclusive Special Court (NDPS) No. 2, Patna, vide its Letter No. 298 dated 10.09.2024, to this Court by which he has reported that the present case is pending at the stage of prosecution evidence and the petitioner was taken into judicial custody on 06.05.2022 and since then he is in judicial custody.

10. From perusal of paragraph no. 6 of the show cause filed on behalf of the Inspector of Police-cum-Station House Officer, Agam Kuan, Patna, it revealed that after receiving the order of the Hon'ble Court and for compliance of the order, a Sub-Inspector rank Police Officer was deployed for keeping close watch on the petitioner and consequently on 27.07.2018 at 19.30 hours, the said police officer visited at the house of the



petitioner where the petitioner was found absconding but his father, namely, Kapil Muni Sahani, was found to be alive and his father Kapil Muni Sahani has stated that his wife has died four years ago and he has no relation with the petitioner for last eight years.

11. Considering the aforesaid facts and circumstances of the case as well as 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 Fatuha P.S. Case No. 164 of 2014 pending in the court of learned Exclusive Special Court (NDPS) No.2, Patna.

12. Learned trial court is directed to take steps for the conclusion of trial as early as possible.

13. A copy of this order be communicated to the Senior Superintended of Police and Superintend of Police, Patna with direction to take steps for the production of all the witnesses of this case in connection with Fatuha P.S. Case No. 164 of 2014 for their depositions.

(Chandra Prakash Singh, J)

shivam/-

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

