

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.88770 of 2024

Arising Out of PS. Case No.-1 Year-2024 Thana- D.R.I District- Muzaffarpur

Manohar Ray @ Mukhiya S/O Munshi Lal Ray R/O Village- Bahrampur,
P.O- Saistapur, P.S- Raghapur (Rustampur), Distt.- Vaishali.

... .. Petitioner/s

Versus

Union of India through DRI Delhi

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate
		Mr. Santosh Kumar Pandey, Advocate
For the Opposite Party/s	:	Dr. K.N. Singh, Sr. SC DRI

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER

8 26-06-2025 Heard Mr. Ramakant Sharma, the learned Senior
counsel for the petitioner and Mr. Anshuman Singh, the learned
Senior SC for the Union of India.

2. The petitioner seeks bail in a case registered for
the offence punishable under Sections 8(c), 20, 25 and 29 of the
NDPS Act.

3. As per FIR, upon secret information that a huge
quantity of Ganja was being transported from Shillong to
Muzaffarpur through Purnea, Darbhanga, a Tata Truck was
intercepted and the driver was apprehended who disclosed his
name as Md. Nasir and a total of 137.5 kg Ganja was recovered
and on the confessional statement of Md. Nasir five persons
including this petitioner were arrested from a Ford Car.

4. Mr. Ramakant Sharma, the learned senior counsel
for the petitioner submits that the petitioner has been falsely



implicated in this case and his name has surfaced on the statement of apprehended driver of the truck. He has next submitted that the petitioner was not arrested from the truck loaded with Ganja, rather he was arrested along with four other persons from a Ford Car on the next date and out of which three persons were released by the DRI officials including Jitendra Rai who was the owner of the said Ford Car. The learned senior counsel for the petitioner has further submitted that no incriminating material has been recovered from the possession of this petitioner to connect him with this crime. The petitioner has not given any statement under Section 67 of the N.D.P.S Act, rather he has been pressurized to sign on some plain paper. The mandatory provisions of N.D.P.S Act have not been followed by the DRI officials and the statement of taking sample from each packet of Ganja has not been made. The sampling process has not been videographed in front of a Gazetted Officer. The learned senior counsel for the petitioner has also submitted that there is no evidence on record against the petitioner except the confessional statement under section 67 NDPS Act, which has no evidentiary value. The petitioner is a handicapped person who is undergoing treatment for the last one year. It has lastly been submitted that though the petitioner



has antecedent of nine cases but are not of similar nature and in all cases he is on bail and is in custody since 30.05.2024.

5. Mr. Anshuman Singh, the learned Senior SC for the Union of India vehemently opposed the prayer for bail and submits that on a secret information, DRI officers went to Matti Toll Plaza where they sized a truck in which Mohd. Nasir was the driver. During interrogation, Nasir accepted that Ganja was hidden behind and below the driver's seat and on thorough search of the said truck 137.5 kg of ganja was recovered in 27 packets. While interrogating, revelation was made by Md. Nasir, about syndicate members and he further disclosed that he would get payment for transportation of Ganja near Medical Overbridge in Muzaffarpur. Accordingly, a Ford Car bearing No. BR01 DX 6228 was detained which was occupied by five members namely, Anil Kumar, Manohar Ray (petitioner) Vinay Kumar, Jintendra Ray and Ashok Paswan. Mr. Anshuman Singh, the learned Senior SC for the Union of India further submits that on the basis of facts and circumstances, interrogation of all six intercepted persons and their statements tendered under Section 67 of the NDPS Act, three intercepted persons namely, Md. Nasir, Anil Kumar and Manohar Ray@ Mukhiya (petitioner) were found deeply involved in illegal



activities and they also admitted their guilt and knowledge for conscious possession, carriage and transportation of the seized Ganja in lure of money. Mr. Anshuman Singh, the learned Senior SC for the Union of India has next submitted that the remaining three persons were released as their involvement could not be established during the investigation.

6. Lastly, Mr. Anshuman Singh, the learned Senior SC for the Union of India, relied upon a judgment of Hon'ble Supreme Court passed in SLP (CRL) No. 2351 of 2023 (Union of India Vs. Ajay Kumar Singh @ Pappu) dated 28.03.2023 in which the Hon'ble Apex Court had reiterated in paragraph nos. 14, 15, 16 and 17 of the said judgment which reads as follows:-

“14. This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight of Section 37 of the NDPS Act, which, inter alia, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely, (i) the public prosecutor has been given an opportunity to oppose the bail application;



and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail.

15. For the sake of convenience Section 37(1) is reproduced hereinbelow:-

“37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for



such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.’

16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

17. The quantity of “ganja” recovered is admittedly of commercial quantity. The High court has not recorded any finding that the respondent- accused is not prima facie guilty of the offence alleged and that he is not likely to commit the same offence when



enlarged on bail rather his antecedents are indicative that he is a regular offender. In the absence of recording of such satisfaction by the court, we are of the opinion that the High Court manifestly erred in enlarging the respondent-accused on bail.”

The grant of bail in NDPS cases where the recovery of commercial quantity of narcotic is alleged is circumscribed under Narcotic Drugs and Psychotropic Substances Act, 1985, Section 37 which says that before grant of bail, the Court must have reason to believe that petitioner has not committed the offence and in the event of release he would not commit similar offence.

7. Considering the aforesaid facts and circumstances of the case and taking into account that no recovery has been made from the conscious physical possession of the petitioner, neither he was the owner of the truck from which the Ganja was recovered nor was he apprehended from the said truck, the owner of the Ford Car namely Jitendra Ray was released as also the period of custody of the petitioner and the petitioner has no criminal antecedent under the N.D.P.S Act, let the petitioner, above named, be released on bail on furnishing bail bond of Rs.



25,000/- (Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending /concerned court, in connection with Special Case (NDPS) No. 199 of 2023 subject to the conditions that

a. One of the bailors of the petitioner shall be her close relative.

b. The petitioner shall remain physically present in Court on each date of the trial.

c In case of absence on two consecutive dates, or in violation of the terms of the bail and if the prosecution is found involvement of the petitioner in similar nature of offence, the bail bond of the petitioner will be liable to be canceled by the Court concerned.

d And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of



or in the name of verification.

e. In view of the antecedent of the petitioner, the petitioner is directed to appear before the Superintendent of Police, Muzaffarpur within fifteen days of his release with a copy of this order and every two weeks thereafter for the next nine months. The conduct of the petitioner will be kept under watch in this period by the Superintendent of Police concerned and if it is found wanting in any respect, a report shall be made to the court concerned by him to initiate a proceeding for cancellation of bail for reasons of misuse of bail. After reporting to the Superintendent of Police, a certificate will be filed by the petitioner before the court concerned.

8. It is made clear that the observations, if any, made in this order, shall be of no bearing during the trial.

(Sourendra Pandey, J)

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