

www.ecourtsindia.com

www.ecourtsindia.com

www.ecourtsindia.com

www.ecourtsindia.com

www.ecourtsindia.com

www.ecourtsindia.com

This is a True Copy of the court records online. Authenticated @ <https://eCourtsIndia.com/cnr/JHHC010375122022/truecopy/order-5.pdf>

kilograms of liquid opium was said to have been recovered from the alleged motorcycle upon which it is said that the appellant was travelling but the informant in this case has categorically stated in para-8 that he has not weighed the alleged contraband (wet opium) at the place of occurrence and only on rough estimation / guess work, he has written three kilograms in the seizure list.

4. Further it has also been admitted by this witness informant i.e. P.W.-7 that at the place of occurrence the seized articles were not sealed nor weighed and therefore, the veracity, truthfulness and weight of the alleged contraband becomes doubtful.

5. Further, the learned defence counsel has also pointed out from the deposition of P.W.-9 vide para-1, by which the weight of the contraband comes to 1kg 900 grams and thus the finding of the learned Court below that 2.380 kgs. Opium was not based on the admissible evidence in the eyes of law.

6. Further, the I.O. in this case has been examined as P.W.-8 who has deposed in para-8 of his cross-examination that he did not investigate as to who was the owner of the seized motorcycle from where the alleged contraband is said to have been recovered and thus the whole investigation is faulty and further it has also been submitted on behalf of the appellant that the mandate of Section 41 and 42 of the N.D.P.S. Act has not been strictly complied with and therefore the prosecution case gets vitiated.

7. Learned counsel appearing on behalf of the appellant has submitted that there is no criminal history against this appellant as evident from para-30 of the impugned judgement.

8. Further it has also been pointed out that this appellant has remained in jail for more than two years and as such half of the maximum sentence as awarded by the learned Court below has already been served by the appellant and this appeal is not likely to be heard in near future and the appellant is ready to deposit the entire fine amount and therefore, he deserves to be enlarged on bail.

9. On the other hand the learned A.P.P. appearing on behalf of the State has opposed the contentions raised on behalf of the appellant and submitted that this appellant has been caught red handed along with huge quantity of contraband i.e. liquid opium weighing 2.380 Kgs. which has been recovered from his possession and the learned Trial Court has rightly appreciated the evidences adduced on behalf

of the prosecution and convicted the appellant for the offence punishable under Section 18 of the N.D.P.S. Act and therefore, this appellant does not deserve to be enlarged on bail.

10. Having heard the parties, perused the records of this case.

11. In the light of the persuasive submissions advanced on behalf of the appellant, it is found just and proper to enlarge the appellant on bail,

12. Accordingly, the appellant is directed to be enlarged on bail upon furnishing bail bond of Rs.25,000/- (Rupees Twenty-five Thousand only) with two sureties of the like amount each, to the satisfaction of learned Additional Sessions Judge-III-cum-Special Judge N.D.P.S. Act, Chatra in N.D.P.S. Case No. 25 of 2015, further subject to the condition that the entire fine amount i.e. a sum of Rs.20,000/- (Twenty thousand only) is deposited by the appellant without being prejudice to his right of defence.

13. Accordingly, Interlocutory Application being I.A. No. 11563 of 2022, is allowed.

Cr. Appeal (S.J.) No. 808 of 2022

14. This appeal has already been admitted.

15. Let this case be listed under the heading 'for hearing' in seriatim in usual course.

D.S./J.Minj

(Navneet Kumar, J.)