

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20610 of 2015

Arising out of PS.Case No. -251 Year- 2015 Thana -AHIAPUR District- MUZAFFARPUR

Lale Mian @ Lal Miyan, son of Md. Yasin, resident of village : - Batganj,
P.S. : - Pipra Kothi, District : - Motihari (East Champaran).

.... Petitioner

Versus

The State of Bihar.

.... Opposite Party

Appearance :

For the Petitioner : Mr. Yugal Kishore, Advocate.

For the Opposite Party : Mr. Ahmad Ali(App)

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

5 27-11-2015 Heard learned counsel for the petitioner and learned
counsel for the State

The petitioner is languishing in custody since 26.03.2015
in connection with Ahiyapur P.S. Case No. 251 of 2015 for the
offences instituted under Sections 18, 22 and 23 of the NDPS Act.

The prosecution story, in brief, is that the S.I. of Police,
informant, received a secret information on 24.03.2015 at 10 P.M.
that in the village- Kolhua Paigamberpur Chawk, some persons
are engaged in selling and buying intoxicating and psychotropic
substance and for verification of information, the informant
alongwith some police personnels reached there and saw two
persons by the side of road, were exchanging something kept in
polythene. Seeing the police, some people gathered there.
Petitioner and one Sonelal Mahato were apprehended. In presence



of two independent witnesses, person of petitioner was searched from whose possession, a pink colour polythene containing brownish granular (*Danedar*) substance was recovered which weight was 40 gm and on being asked, the petitioner divulged that the recovered intoxicating substance is smack. The apprehended accused disclosed their names on interrogation Lal Miyan and Sonelal Mahato whose detail address is mentioned in the FIR. The informant then asked the petitioner to give papers on which he did not produce any paper. Petitioner confessed before the police that he is engaged in selling smack and Sonelal Mahato also admitted that he is engaged in selling of smack and he was purchasing smack from the petitioner. The FIR also contains production-cum-seizure list.

It has been submitted on behalf of the petitioner that the petitioner has got no criminal antecedent. The petitioner is in custody since 26.03.2015 and the charge sheet has been submitted in the case. There is no allegation of tampering of the evidence against the petitioner. As per prosecution case, 40 Grams of suspected Smack is said to have been recovered.

Vide order dated 09.10.2015, FSL report was called for. The said report dated 12.11.2015 is available on the record sent by the Director, Forensic Science Laboratory, Bihar, Patna. It has been submitted that till date the sample collected by the

Investigating Officer has not been sent for its chemical examination. Hence, no report is available. It is further submitted that without any chemical examination of the seized article it can not be said that the seized article is a contraband substance. It is latch on the part of the prosecution and the petitioner has remained in custody for about eight months.

On behalf of the State it has been submitted that no sample has been sent by the Investigating Officer for its chemical examination to the Forensic Science Laboratory to ascertain whether the seized article is a contraband substance or not ?

Considering the aforesaid facts and circumstances and latch on the part of the prosecution, let the petitioner above named, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Sessions Judge-cum-Special Judge, Muzaffarpur, in connection with Ahiyapur P.S. Case No. 251 of 2015.

Let a copy of this order be sent to the District Magistrate, Muzaffarpur and the Sr. Superintendent of Police, Muzaffarpur, so that such latch may not occur in future.

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(Sudhir Singh, J)