

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50605 of 2016

Arising Out of PS.Case No. -43 Year- 2016 Thana -DARIHAT District- SASARAM (ROHTAS)

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SIKANDAR YADAV S/O LATE RAGHUPATI YADAV RESIDENT OF
VILLAGE- BHUSHULA, P.S. DARIHAT, DISTRICT ROHTAS.

.... PETITIONER/S

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Umeshanand Pandit, Adv.

For the Opposite Party/s : Mr. Sri Nirmal Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 16-12-2016 Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor.

180 pouches each containing 200 ml is said to have
been recovered from the house of the petitioner and for that
petitioner happens to be under custody since 13.06.2016.
Furthermore, from para-3 of the petition petitioner has got no
criminal antecedent.

Learned counsel for the petitioner has submitted that
at an earlier occasion while he had approached this Court under
Criminal Miscellaneous No.35767 of 2016, under wrong
perception prayed for withdrawal of aforesaid petition which was
allowed in terms of giving a liberty to the petitioner to approach to
this Court with appropriate application. Therefore, such
observation having based upon submission having been made on
behalf of petitioner should not be considered as a hurdle while



entertaining the prayer of the petitioner at the present moment. Furthermore, it has also been submitted that save and except Section 439 Cr.P.C. no other provision for the present, in the facts and circumstances of the case, is available to the petitioner and so, the appropriate application which the present one should be considered under the guise of Section 439 Cr.P.C. whereupon, considering the prayer of the petitioner, he be released on bail.

The learned Additional Public Prosecutor opposed the prayer and submitted that at an earlier occasion the prayer for regular bail was made and so, the present petition will not cover the appropriate application as pointed out in the order dated 20.08.2016 in Criminal Miscellaneous No.35767 of 2016.

Admittedly prayer for bail is entertainable at the end of the High Court in terms of Section 439 of the Cr.P.C. The other provisions in the background of prayer made by the petitioner is not available under Cr.P.C. however under Article 226 of the Constitution of India the prayer should be challenging the detention which, in the facts and circumstances of the case could not, on account of being remanded by a judicial order. Furthermore, there happens to be no barrier in entertaining a petition under Section 439 Cr.P.C. Consequent thereupon, prayer of the petitioner is accepted.



Regard being had to the facts and circumstances of the case, petitioner Sikandar Yadav is directed to be released on bail on furnishing bail bonds of Rs.10,000/-(ten thousand) with two sureties of the like amount each, to the satisfaction of learned Judicial Magistrate, 1st Class, Rohtas at Sasaram in connection with Darihat P.S. Case No.43/2016.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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