

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20452 of 2014

Arising Out of PS.Case No. -113 Year- 2012 Thana -BEERPUR District- BEGUSARAI

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Md. Shakir Son of Md. Abuzafar Resident of Village- Mubarakur, Police Station- Birpur, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. Mitu Bala Wife of not known Medicine Inspector, Begusarai, Sadar Hospital, Begusarai, Police Station- Town, District- Begusarai.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : M/s Alok Kumar, Naciketa Jha and
Birendra Singh, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY
ORAL ORDER

2 23-06-2017 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner has challenged the order of taking cognizance in N.D.P.S. Case No. 01/2013, arising out of Birpur P.S. Case No. 113 of 2012 under sections 8 and 16 of the N.D.P.S. Act and sections 17 (B), 18 (a) (i) B, 27 (A), 27 (D), 28, 28 (A) and 26 (b) of the Drugs and Cosmetics Act.

Learned counsel for the petitioner has submitted that the Court below has passed the order without application of mind and he has specifically pointed out that the Court below took cognizance under section 27 (D) of the Drugs and Cosmetics Act, which is totally non-application of mind. He further submits that



from the complaint of the Drug Inspector, Begusaria which is basis of prosecution against the petitioner, no case is made out either under the N.D.P.S. Act or under the Drugs and Cosmetics Act. The alleged drugs seized from the shop of the petitioner, were purchased as per the medical advised for the treatment of the nephew of the petitioner. Learned counsel for the petitioner further submits that the petitioner is a licensed shop keeper and has falsely been implicated in this case on obnoxious consideration.

Learned counsel for the State opposing the prayer of the petitioner submits that all the submissions advanced by the petitioner can be adequately dealt by the court below and the court below may have the advantage of the perusal of all the concerned documents and materials.

Mr. Nachiketa Jha, learned counsel for the petitioner raised apprehension that the court below may not consider his submission and as such, he may not get justice if he is relegated to the Court below for filing petition of discharge.

Having heard learned counsel for the parties, this Court feels that for the ends of justice, the petitioner is granted liberty to raise all the submissions made before this Court, by filing an appropriate application for discharge before the court



below and it goes without saying that the court below will consider the issue raised by the petitioner in the petition for discharge and dispose of the matter by passing a reasoned/speaking order. The court below is expected to take final decision on the application if it is filed by the petitioner within a period of one month from today, within further three months.

With the aforesaid observation and direction, this application stands disposed of.

(Anil Kumar Upadhyay, J)

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