

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22264 of 2020

Arising Out of PS. Case No.-214 Year-2020 Thana- AHIYAPUR District- Muzaffarpur

MAHESH SAHNI, S/o Pitambar Sahni, Resident of Village-Vijay Chhapra,
P.S.-Ahiyapur, District-Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Jha, Adv.

For the Opposite Party/s : Mr. Madhura Nand Jha, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 24-08-2020 The Court proceeding has been conducted through virtual mode.

Since the Court is not functional in physical mode due to the present pandemic, Covid-19, the matter has been listed with defects.

Learned counsel for the petitioner undertakes to remove the defects within a period of four weeks on resumption of physical court proceeding.

In case of non-removal of the defects within the undertaken period, the office will place the matter before the bench.

Heard learned counsel for the petitioner and learned APP for the State.

The petitioner has preferred the present application for grant of bail in a case registered for the offences punishable under Section 37(b) (c) of the Bihar Prohibition and Excise Act, 20169, as amended by Amendment Act 8 of 2018 and Sections



20, 22 of the N.D.P.S. Act.

The prosecution case as per the written report of Bila is to the effect that on 20.02.2020 at 7.00 P.M., the informant was sitting in his house when his nephew Trimohan Sahni came and said that the petitioner Mahesh Sahni along with co-accused, Dilip Sahni have kept something wrapped in the paper on the thatch of the informant and on seeing the informant, they started fleeing away and on chase, the petitioner was caught and enquired then the petitioner took out 30 sachets kept hidden on the thatch of the informant. Thereafter, the local mukhiya was informed and subsequently, the petitioner was handed over to the police. The petitioner was also found in an intoxicated condition which got confirmed after putting him on breath analyzer test.

It is submitted by learned counsel for the petitioner that the recovery has not been made from the conscious physical possession of the petitioner. It was the informant who handed over the contraband to the police. The weight of the seized contraband has neither been mentioned in the FIR nor in the seizure list, but the impugned order suggests that it was found to be 12 grams. There is no chemical examination report on record to suggest that the recovered contraband is smack. The



petitioner is languishing in custody since 21.02.2020 and the investigation has already been concluded. A statement has been made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent.

Learned APP for the State submits that the said recovery has been made at the instance of the petitioner.

Considering the fact that offences under the NDPS Act is weight based offence but neither the FIR nor the seizure list reflect the weight of the seized material nor it is mentioned whether the weight of the seized contraband was taken, though the impugned order suggests that the weight of seized material was 12 gram, which even assuming to be smack, is between small and commercial quantity, the investigation has already been concluded, statement made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent, let the petitioner above named be released on bail for the present provisionally for a period of three months on furnishing one surety to the satisfaction of the learned Special Judge, Excise, Muzaffarpur, in connection with Ahiyapur P.S. Case No. 214 of 2020.

However, in view of the present pandemic, COVID-19, it will be open for the learned Court below to accept the



bail bond on furnishing an undertaking by the surety, on photo copy of his Aadhar Card, to the effect that he is ready to become the bailor of the petitioner which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the petitioner will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two sureties, including one surety given at the time of provisional bail, of the like amount each to the satisfaction of the learned Special Judge, Excise, Muzaffarpur, in connection with Ahiyapur P.S. Case No. 214 of 2020.

The learned Court below will further be at liberty to extend the period of provisional bail if the court proceeding in physical mode will not resume in next three months.

Accordingly, the present application stands disposed of.

(Dinesh Kumar Singh, J)

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