

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.25479 of 2020**

Arising Out of PS. Case No.-763 Year-2019 Thana- KADAMKUAN District- Patna

Rishu Kumar @ Rishu, Son of Late Subodh Kumar, Resident of Village -
Amirganj, Dharampur, Tajpur Road, P.S.- Samastipur, District - Samastipur
... .. Petitioner

Versus

The State of Bihar Opposite Party

Appearance :

For the Petitioner/s : Mr.Bimlesh Kumar Pandey, Advocate
For the Opposite Party/s : Mr.Sunil Kumar Pandey, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

2 01-10-2020 Learned counsel for the petitioner undertakes to
remove all the defects pointed out by the Stamp Reporter within
three weeks after start of normal functioning of the Court.

Heard learned counsel for the petitioner and Mr. Sunil
Kumar Pandey, learned A.P.P. for the State.

Mr. Bimlesh Kumar Pandey, learned counsel for the
petitioner submits that the petitioner in this case is seeking regular
bail in connection with Kadamkuan P.S. Case No. 763 of 2019
and Special Case No. 169 of 2019 registered for the offences under
Section 448/34 of the Indian Penal Code and Sections 20 and 22 of
N.D.P.S. Act.

It is his submission that the total alleged recovery of
Smack from this petitioner is said to be 6 grams but at the same
time his submission is that the 'Smack' in itself is not mentioned in
the N.D.P.S. Act and in fact the Morphine which is the substance



in the Smack has been mentioned whereof the small quantity is 5 gram and commercial quantity is 250 grams.

It is submitted in the present case that it would be evident from the allegations in the First Information Report itself that the informant had brought this petitioner to the Police Station and it is alleged that in the Police Station from the pocket of the petitioner the aforesaid quantity of Smack was recovered. It is, thus, submitted that the very search of the petitioner suffers from patent illegality and there is violation of each and every safeguard provided under the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as the 'Act of 1985') to an accused. Violation of Section 42 and 50 of the Act of 1985 are apparent on the face of it. It is further submitted that since the quantity is not commercial, the rigours of Section 37 of the Act of 1985 would not be applicable.

Mr. Sunil Kumar Pandey, learned A.P.P. for the State has though opposed the prayer for regular bail of the petitioner but considering the facts and circumstances and the submissions made hereinabove on behalf of the petitioner, let the petitioner, above-named be released on bail on 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 and Sessions Judge, XVI, Patna in connection with Kadamkuan P.S. Case No.



763 of 2019 and Special Case No. 169 of 2019, subject to the conditions as laid down under Section 437(3) of the Cr.P.C. as under:

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, or the commission of which he is suspected, and

(c) that such person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

And further condition that he will abide by and observe the guidelines and directives of the Government of India and the State Government with regard to COVID-19 Pandemic.

(Rajeev Ranjan Prasad, J)

vats/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

