

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47733 of 2019

Arising Out of PS. Case No.-336 Year-2019 Thana- BUXAR District- Buxar

VIJAY KUMAR CHOUDHARY @ VIJAY KUMAR, Son of Late Madan Chaudhary Resident of - Shantinagar Chinni Mill, P.S. Buxar (Town), District- Buxar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajit Kumar, Adv.

For the Opposite Party/s : Mr. J. N. Thakur, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

7 16-06-2020 Heard learned counsel for the petitioner and learned
APP for the State.

The matter has been taken up through virtual Court proceeding.

The petitioner has preferred the present application for grant of bail in a case registered for the offences punishable under Sections 18, 21, 22 and 27 of the NDPS Act.

The prosecution case as per the self statement of Avinash Kumar Singh, Inspector-cum-S.H.O., Buxar Town Police Station is to the effect that on 16.04.2019 at 06.30 P.M. information was received that in Shanti Nagar area, one Vijay Kumar, the petitioner was selling heroine. Consequently, a team was constituted and raid was laid when on seeing the police party, the petitioner tried to escape from the scene, but he was



apprehended. During frisking, from his pocket, 18 sachets of heroine like material, one broken blade, one surgical blade, small pieces of papers and one mobile phone were recovered. The petitioner confessed that he used to consume heroine and selling the same to other customers, leading to registration of the present case.

It is submitted by learned counsel for the petitioner that the weight of the seized contraband has not been mentioned. Moreover, keeping the investigation partially pending, the charge sheet has been submitted without obtaining the chemical examination report of FSL in order to get the petitioner under custody. The petitioner is languishing in custody since 17.04.2019. 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 18 sachets of heroine like materials have been recovered from the possession of the petitioner and the petitioner has confessed his guilt.

Having considered rival submissions of the parties, this Court is constrained to observe that the Inspector rank police officer does not know how to register the FIR under the NDPS Act, being a stringent Act. It is a weight based offence, but the weight of the seized contraband has neither been given in the



FIR nor in the seizure list, nor in the case diary which reflects that during investigation neither any effort was made to take weight of the seized contraband nor the supervising officer even directed the I.O. to record the same. Moreover, without receiving the chemical examination report from the FSL, the chargesheet has been submitted against the petitioner which reflects the callous manner in which the FIR under such a stringent Act is being registered and the investigation is being carried out.

Considering the lapses on the part of the prosecuting agency, there is no likelihood of trial being commenced in near future, since physical Court proceeding is not functioning due to present pandemic, Covid-19 as the investigation has partially been kept pending awaiting the FSL report, coupled with the fact that the petitioner is not having any criminal antecedent, this Court is constrain to direct for release of the petitioner above named for the present provisionally for a period of three months on furnishing one surety to the satisfaction of the learned District Judge-cum-Special Court, N.D.P.S. Act, Buxar, in connection with N.D.P.S. Case No.03 of 2019, arising out of Buxar (T) P.S. Case No. 336 of 2019.

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 District Judge-cum-Special Court, N.D.P.S. Act, Buxar, in connection with N.D.P.S. Case No.03 of 2019, arising out of Buxar (T) P.S. Case No. 336 of 2019.

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

(Dinesh Kumar Singh, J)

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