

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10389 of 2020

Arising Out of PS. Case No.-43 Year-2019 Thana- MEDNI CHAUKI District- Lakhisarai

Rajdeep Kumar , aged about 22 years, Gender – Male, son of Ramsewak Mahto, Salarpur, Amarpur, Police Station - Medini Chauki, District- Lakhisarai

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate

For the Opposite Party/s : Mr. Choubey Jawahar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 04-09-2020 Heard Mr. Ramakant Sharma, learned senior counsel for the petitioner and Mr. Choubey Jawahar, learned Additional Public Prosecutor appearing for the State through video conferencing.

Petitioner apprehends arrest in connection with Medini Chauki P.S. Case No. 43 of 2019 registered under Sections 27 (b)(ii), 27(d), 28, 28(A) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as ‘the Act’) and Sections 275 and 276 of the I.P.C.

The allegation against the petitioner as per the First Information Report is that Police along with Drugs authorities raided one nursing home namely, Shivam Nursing Home and found that a medicine shop was being run over there without having any licence.

Learned senior counsel for the petitioner submits that the petitioner is not the owner of the nursing home in question and has falsely been implicated in this case. Learned senior



counsel referring to Annexure -2 to this bail application submits that petitioner is not the owner of the nursing home and has taken training of Paramedics (Compounder) and has been working in the nursing home as a Compounder. Learned senior counsel further submits that in the case diary it has come to light that Police raided the medicine shop of the nursing home and the alleged medicines were recovered from the RECEPTION. Learned senior counsel thus submits that the drugs were being kept for use of patients admitted in the nursing home and same were not meant for sale to outsiders. Learned senior counsel further submits that drugs recovered from the nursing home were not found spurious and some of the medicines were expired. Learned senior counsel further submits that prima facie the prosecution lodged against the petitioner is not maintainable inasmuch as the Division Bench of this Court in CR.WJC No. 719 of 1998 vide its order dated 21.01.2011 has held that on the basis of the F.I.R. lodged by the Police criminal proceeding cannot be initiated and the criminal court is also barred from taking cognizance as provided under Section 32 of the Act. The Hon'ble Court has taken note of the fact that under Section 22 of the Act a complaint can be filed by the Drug Inspector or authorized persons and the same cannot be lodged by the



Officer- in-charge of a Police Station. Learned senior counsel further submits that Division Bench further held that no prosecution can be initiated for offence relating to contravention of any of the provisions mentioned under Chapter IV of the Act unless it has been lodged under Section 22 (1) of the Act by way of filing a complaint. Learned senior counsel further submits that the judgment of the Division Bench was followed by a Single Bench of this Court in Cr. Misc. No. 20002 of 2014 in its order dated 04.09.2017. Learned senior counsel further submits that the matter is pending before Full Bench of this Court in Cr. WJC. No. 887 of 2013 Bablu @ Rajesh Kumar vs. The State of Bihar & Ors. Learned senior counsel also submits that in the present case also F.I.R. has been lodged by the Police Officer alleging contravention of the provisions under Chapter IV of the Act and no complaint has been lodged or filed by the Drug Inspector as per the provisions of Section 22 read with Section 32 of the Act. Learned senior counsel also submits that raid was conducted by the Police and the F.I.R. has been lodged instead of complaint under Section 22 of the Act.

Having heard learned counsel for the parties and taking into consideration the fact that prima facie it appears that Division Bench of this Court has held that prosecution for



violation and contravention of the provisions mentioned under Chapter IV of the Act can only be initiated by filing a complaint by Drug Inspector and /or other authorized Officers and not by the Police, I am inclined to grant anticipatory bail to the petitioner.

Accordingly, in the event of arrest or surrender before the court below within six weeks from today, petitioner, above named, shall be released on anticipatory bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate - 1st, Lakhisarai / court concerned in connection with Medini Chauki P.S. Case No. 43 of 2019 , subject to the condition as laid down under Section 438 (2) of the Code Of Criminal Procedure.

It is made clear that at the time of furnishing bail bonds all the parties shall follow the guidelines regarding lockdown and social distancing.

(Anil Kumar Sinha, J)

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