

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.17924 of 2021**

Arising Out of PS. Case No.-82 Year-2020 Thana- DIGHALBANK District- Kishanganj

MALIK AKHTAR @ MALEK AKHTAR SON OF MD. MOHSIN
RESIDENT OF VILLAGE- MOHMARI, P.S. DIGHALBANK, DISTRICT-
KISHANGANJ

... .. Petitioner/s

Versus

THE UNION OF INDIA THROUGH THE NARCOTICS COMMISSIONER
AND DEPARTMENT OF NDPS, NEW DELHI NEW DELHI

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Onkar Nath, Adv.

For the Opposite Party/s : Mr.

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

2 12-07-2021 Learned counsel for the petitioner undertakes to remove all the defects as pointed out by office within four weeks after start of normal functioning of the Court.

Heard learned counsel for the petitioner. No one appears on behalf of the Union of India.

Petitioner in the present case is seeking regular bail in connection with Dighalbank P.S. Case No.82/2020 (Special Case No.11/2020) registered for the offences punishable under Sections 8©, 20(b)(ii)(B) and 29 of the N.D.P.S. Act.

Learned counsel for the petitioner submits that in the present case as per the prosecution story the police searched the petitioner and in presence of independent witnesses some substance like brown sugar which has been weighed around 150 Grams has been recovered.



Learned counsel submits that from the First Information Report itself it would appear that search of the body of the petitioner was not conducted in accordance with law. According to him, the safeguard provided to an accused under Section 42 of the N.D.P.S. Act has not been followed.

It is further submitted that admittedly the quantity of brown sugar which is called Heroine in terms of Entry 56 of S.O. 1055 (E) dated 2001 notified under clause (viia) and (xxiia) of Section 2 of the N.D.P.S. Act, 1985 is less than the commercial quantity and as such the bar created under Section 37 of the N.D.P.S. Act would not be applicable.

Learned counsel further submits that the petitioner is in custody since 24.09.2020, investigation against him is complete but the trial is not likely to be taken up in near future and he has no criminal antecedent.

No one appears for the Union of India to oppose this application.

In the facts and circumstances of the case where the seized article is less than commercial quantity, the petitioner has remained in jail for 9 months approximately and the investigation is complete but the trial is not likely to take place in near future, 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 Special Judge,



NDPS Act, Kishanganj in connection with Special Case No.11/2020 (Dighalbank P.S. Case No.82/2020), subject to the condition as laid down under Section 437 (3) 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, of 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 the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajeev Ranjan Prasad, J)

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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'.

