

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20770 of 2021

Arising Out of PS. Case No.-765 Year-2020 Thana- AHIYAPUR District- Muzaffarpur

Lalan Mahato, Son of Bipin Mahato, Resident of Village - Akharaghat,
Karpuri Nagar, P.S.- Town, Distt.- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bela Singh, Advocate

For the Opposite Party/s : Mr. Sanjay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

ORAL ORDER

4 06-12-2021 The applicant/accused in Crime No.765 of 2020 registered with Ahiyapur Police Station for the offences punishable under Sections 414 read with Section 34 of the Indian Penal Code as well as Sections 20 and 22 of the N.D.P.S. Act, by this application is seeking his release on bail during pendency of the trial after filing of the charge sheet.

Heard the learned counsel appearing for the applicant/accused. He argued that co-accused Amar Nath Sahni is already directed to be released on bail by this Court vide order dated 25.11.2021 passed in Criminal Misc. No. 29987 of 2021. This position is not disputed. The copy of that order is also supplied by the learned counsel for the applicant/accused.

The learned Additional Prosecutor opposed the



application by contending that the offence is serious and it is involving seizure of Charas as well as Ganja.

I have considered the submissions so advance and perused the materials placed before me including the FIR.

The FIR is lodged by Police Officer Triloki Nath Jha - PSO. It is averred in the FIR that during the course of inspection of vehicles, police party noted two motorcycles proceeding in fast speed. Those motorcycles were stopped and two accused namely Amar Nath Sahni and Sunil Kumar came to be apprehended. Their personal search yielded in recovery of Charas as well as Ganja. Subsequently one tempo was stopped and from that tempo the present applicant along with four others were apprehended. According to the FIR, personal search of the applicant yielded in 100 Grams Charas as well as two or three grams Ganja.

The FIR, so far as the present applicant is concerned, is conspicuously silent about compliance of provision of Section 50 of the NDPS Act. It seems that there was no option given to the present applicant for search in presence either the Gazetted Officer or the Magistrate. Prima facie such action makes the search and seizure suspect.

In this view of the matter, despite hearing the



learned Prosecutor, I am of the considered opinion that there are reasonable grounds for believing that the applicant is not guilty of the offence alleged against him. Nothing is pointed out to show that the applicant may repeat to commit the similar offences and there, the order :-

i. The application is allowed.

ii. The applicant/accused in Crime No.765 of 2020 registered with Ahiyapur Police Station for the offences punishable under Sections 414 read with Section 34 of the Indian Penal Code as well as Sections 20 and 22 of the N.D.P.S. Act be released on bail on executing P.R. bond of Rs.30,000/- (Rupees Thirty Thousand) on furnishing surety of the like amount to the satisfaction of the trial court with the following conditions: -

(I) The applicant/accused should not extend any threat, promise of inducement to the persons acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer.

(II) The applicant/accused should cooperate the trial court in expeditious disposal of the trial against him.

(III) The applicant/accused should not contact the members of the prosecuting party as well as witnesses in this



case in any manner till conclusion of the trial.

(IV) The applicant should not repeat commission of similar offence in future and if he is found to be involved in commission of similar offence, the State is at liberty to apply for cancellation of bail granted to the applicant in the instant case.

(V) The applicant/accused should attend the territorial police station on every 2nd and 4th Sunday in between 11 A.M. to 1 P.M.

The applicant to remove all office objections forthwith and the Registry to issue bail-writ as per this order only after removal of office objections by the appellant/accused.

(A. M. Badar, J)

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