

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27879 of 2021**

Arising Out of PS. Case No.-718 Year-2020 Thana- KUDHNI District- Muzaffarpur

SHIVNATH SAHANI, Son of Kailash Sahani @ Kailas Sahni, Resident of
Village- Naya Tola Kudhani, P.S.- Kudhani, District- Muzaffarpur.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Ganesh Prasad Singh, Advocate

For the Opposite Party/s : Mr. Md. Fahimuddin, A.P.P.

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

2 25-10-2021 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 and Mr. Md.
Fahimuddin, learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in
connection with Kudhani P.S. Case No. 718 of 2020 registered
for the offence punishable under Section 414/34 of the Indian
Penal Code, Section 25(1-b)/26/35 of the Arms Act and Section
8, 20 and 22 of the Narcotic Drugs and Psychotropic Substances
Act (in short 'N.D.P.S. Act'). He is in custody since 15.11.2020.
The petitioner has no criminal antecedent.

As per the prosecution story, when the Police party
intercepted the motorcycle in question, three persons were



found riding on the same, this petitioner is said to be the pillion rider, in course of search nothing incriminating was recovered from the possession of the petitioner and the co-accused Haresh Kumar @ Haresh Sahani. From possession of co-accused Ganesh Sahani one country made pistol and four live cartridges were recovered and from the dicky of the motorcycle four packets containing charas like substance weighing total 1.933 Kg. were recovered.

Learned counsel for the petitioner submits that neither the motorcycle in question belongs to the petitioner nor there is any recovery from his possession and the seizure of charas from the motorcycle cannot be taken as in conscious possession of the petitioner.

Learned counsel further submits that from the seizure list which is enclosed with the F.I.R. and present on the record it may be found that Police has shown recovery of charas from the motorcycle and considering this aspect of the matter a learned coordinate Bench of this Court has granted privilege of regular bail to co-accused Haresh Kumar @ Haresh Sahani in Cr. Misc. No. 27124 of 2021. It is his submission that in the facts of the present case the rigours of Section 37 of the N.D.P.S. Act would not be attracted and further that the petitioner has got no



criminal antecedent may be considered for purpose of release of the petitioner on bail.

Mr. Md. Fahimuddin, learned A.P.P. for the State has though opposed the prayer for regular bail of the petitioner but after looking into the order passed by learned coordinate Bench of this Court and the specific statement made in paragraph '7' of the petition saying that motorcycle in question does not belong to the petitioner and he has no concern with the same, no distinction could be made out between the case of this petitioner and that of co-accused Haresh Kumar @ Haresh Sahani.

Considering the facts and circumstances particularly the seizure list not showing any recovery of incriminating article from the possession of the petitioner and that the co-accused Haresh Kumar @ Haresh Sahani who is similarly situated has been granted bail and no distinction has been carved out in the case of this petitioner with that of Haresh Kumar @ Haresh Sahani and further the petitioner has remained in custody in connection with this case for about one year and investigation against him is complete but the trial is not likely to take place in near future, this Court directs release of the petitioner above named 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 Sessions Judge-cum-Incharge Special Judge, NDPS Act, Muzaffarpur in connection with Kudhani P.S. Case No. 718 of 2020, subject to the condition as laid down under Section 437 (3) Cr.P.C.

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)

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'.

