

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32774 of 2021

Arising Out of PS. Case No.-364 Year-2020 Thana- KAJI MUHAMMADPUR District-
Muzaffarpur

Md. Kaish @ Rahul S/O Md. Hamid R/O Village-Laxmi Chowk Pamariya
Tola, P.S.-Brahmpura, District-Muzaffarpur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mazharul Hassan, Advocate
For the Opposite Party/s : Mr. APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 29-11-2021 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The petitioner seeks regular bail in connection with
Kazi Mohammadpur P.S. Case No. 364 of 2020 dated
29.12.2020 instituted for the offences under Section 414 of the
Indian Penal Code read with Sections 20(B) (ii) (A)/27 of the
N.D.P.S. Act.

Learned counsel for the petitioner submits that the
petitioner is in custody since 30.12.2020, charge-sheet has been
submitted in the case and is a person with clean antecedent.

Learned counsel for the petitioner submits that from
bare perusal of the allegation as alleged in the F.I.R. it would
manifest that Shashi Kumar Bhagat, the S.I. of Police alleges



that on 29.12.2020 at about 5:15 p.m. he along with police force had proceeded to investigate case number 332 of 2020 and got information that accused of the aforesaid case, Md. Kaish @ Rahul and Md. Hussain (though not named in the F.I.R.) are standing under an over bridge with their Apache motorcycle. Accordingly, it is alleged that both on seeing the police started fleeing but they were apprehended and in presence of two independent witnesses, the aforesaid two persons were searched and it is alleged that from left pocket of Md. Kaish, ten sachet of smack was recovered and from the right pocket Rs.14780/- was recovered along with Apache motorcycle as detailed in the FIR.

Learned counsel for the petitioner submits that the informant, Shashi Kumar Bhagat has falsely implicated the petitioner in such a serious offence of N.D.P.S. Act when the F.I.R. as well as seizure list is completely silent with respect to the weight of the contraband alleged to have been recovered. Learned counsel further submits that in absence of weight of the contraband it is difficult to ascertain whether the said contraband was of commercial quantity or not.

Learned A.P.P. for the State vehemently opposes the prayer for regular bail of the petitioner but is not able to meet the submission of learned counsel for the petitioner with regard



to non-mentioning of the weight of the alleged contraband in the F.I.R.

This gives an impression to the Court that either the informant is not aware of the N.D.P.S law or if he is aware, then he has falsely implicated the petitioner as the weight of the contraband is not mentioned in the F.I.R. or in the seizure list, as such it is difficult for the Court to arrive at a conclusion for considering whether bail is to be granted or not to the petitioner but since the weight is not mentioned, the benefit should go to the accused and for this benefit it seems either deliberately or unknowingly, the informant has instituted the case without disclosing the weight of the contraband.

Considering the fact that the petitioner is in custody since 30.12.2020, charge-sheet has been submitted in the case, the petitioner is a person with clean antecedent and the weight of the contraband is not mentioned in the F.I.R. and the seizure list, let the petitioner above named be released on bail on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Sessions Judge-cum-Special Judge, Muzaffarpur in connection with Kazi Mohammadpur P.S. Case No. 364 of 2020 subject to the condition as laid down under



Section 437 (3) Cr.P.C.

Let a copy of this order be sent to the S.S.P.
Muzaffarpur for his perusal so that he is aware of the manner in
which the police investigates and institutes cases under N.D.P.S.
Act.

(Satyavrat Verma, J)

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