

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.34026 of 2021**

Arising Out of PS. Case No.-115 Year-2021 Thana- KOILWAR District- Bhojpur

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ARUN UPADHAYAY, Son of Raj Deo Upadhayay, Resident of Village -
Daulatpur, P.S. - Koilwar, District - Bhojpur.

... .. Petitioner

Versus

THE STATE OF BIHAR

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr.Prakash Chandra Jha, Advocate

For the Opposite Party/s : Mr.Akhileshwar Dayal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 30-07-2021 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 and Mr.

Akhileshwar Dayal, learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in

connection with Koilwar P.S. Case No. 115 of 2021 registered

for the offence punishable under Section 8, 20 (B) (ii) , 22, 25,

29 of the Narcotic Drugs and Psychotropic Substances Act,

1985 (in short ‘N.D.P.S. Act’). He is said to be in custody since

26.03.2021.

The case has been mentioned for out of turn hearing

on the ground that the elder brother of the petitioner has died on

23.07.2021 and no one is available to perform his Shradh ceremony. A copy of the death intimation card showing that Brahmbhoj is fixed on 03.08.2021 has been annexed with the mention slip.

As per the prosecution story, the S.H.O. of the Police Station raided a two storied building near the boring of this petitioner which is said to be that of the petitioner the information was that the petitioner is engaged in illegal business of Ganja. The petitioner was arrested and on search of the place 2.4 Kg. of Ganja has been recovered.

Learned counsel for the petitioner submits that the search and seizure of the Ganja has not been done in accordance with law. There was no Gazetted Officer or Magistrate at the time of search and seizure, thus, the provisions of Section 42 and 50 of the N.D.P.S. Act, 1985 have not been followed. It is also not known as to whether sample of the alleged substance was sealed and preserved.

Mr. Akhileshwar Dayal, learned A.P.P. for the State submits that the quantity of Ganja in the present case is little more than small quantity but less than the commercial quantity.

Considering the facts and circumstances of the case, the seized quantity of Ganja is less than the commercial quantity, the rigours of Section 37 of the N.D.P.S. Act would not

be attracted, petitioner is said to be in custody for more than four months and investigation against him is complete, he has got one criminal antecedent but learned counsel for the petitioner has informed on query that the petitioner is on bail in the said case, in the circumstances, this Court directs release of the petitioner above named on bail on furnishing of 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, Arrah, Bhojpur in connection with Koilwar P.S. Case No. 115 of 2021, 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 petitioner shall attend

the trial on each and every date fixed in the matter, two consecutive defaults in putting appearance before the learned trial court shall invite action towards cancellation of bail of the petitioner and the learned court below shall take necessary action towards this without looking for any application on behalf of the prosecution.

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'.