

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5922 of 2021

Arising Out of PS. Case No.-134 Year-2020 Thana- MITHANPURA District- Muzaffarpur

Vipin Kumar @ Bipin Kumar, Son of Mr. Vijay Mahto, R/O Village-Sambhakhori, P.S.-Sakra, District-Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Ms. Vaishnavi Singh, Advocate
For the Opposite Party/s	:	Mr. Pranav Kumar, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 22-07-2021 The matter has been taken up today for consideration through video conferencing.

The learned counsels are appearing and making submissions from their residence. The Court Master and Secretary are also part of this virtual Court proceedings from their homes, all with the aid of audio visual technology.

Heard learned Counsel for the petitioner and the learned APP for the State.

The petitioner seeks bail in connection with N.D.P.S. Case No.67 of 2020, arising out of Mithanpura P.S. Case No.134 of 2020 registered for the offence punishable under Section 414 of the Indian Penal Code and Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act (in short,



`NDPS Act').

There is an allegation that during routine checking of some labourers while they were entering in the jail premises, mobile phones with battery and without SIM card, six chargers and 95 small packets containing contraband substance have been recovered. Petitioner is stated to be one of the labourers entering the jail premises.

Mr. Ajay Kumar Thakur, learned counsel for the petitioner submits that till date, there is nothing on the record to support the prosecution case that 95 small packets were containing contraband substance. The prosecution case that they are contraband is false. The manner in which the prosecution has proceeded is also indicative of the falsity of the allegations, as one and half months after the alleged seizure, the samples have been sent to the Forensic Science Laboratory. The substance has never been weighed to ascertain the quantity. The petitioner has no criminal antecedents and even as per the prosecution, recovery is from a bag of cement and therefore the petitioner cannot be held liable for the alleged recovery in any manner. Such submissions are based on materials which have come during the course of investigation. It is submitted that the petitioner cannot be held guilty for the offence under the NDPS



Act.

Learned APP for the State has submitted that he has gone through the case diary. Based on the investigation, he is not in a position to controvert the submission made by the petitioner's counsel regarding the substance not being weighed and also the fact that till date, even it has not been ascertained as to what was the contraband substance which was seized in the 95 small sachets. He, however, submits that since the petitioner was trying to smuggle the contraband substance inside the jail, this Court should not entertain his application for bail.

Considering the rival submissions and the fact that the petitioner has now been in custody since 19.08.2020, this Court is inclined to accept the submissions advanced by the petitioner's counsel. The petitioner's prayer for bail is allowed.

Accordingly, let the petitioner, above named, be released on bail on furnishing bail bond of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge-V-cum-Special Judge, NDPS, Muzaffarpur, in connection with N.D.P.S. Case No.67 of 2020, arising out of Mithanpura P.S. Case No.134 of 2020, subject to the following conditions:

- (i) That one of the bailors will be a close relative of the petitioner who



will give an affidavit giving genealogy as to how he is related with the petitioner. The bailor will also undertake to inform the court if there is any change in the address of the petitioner.

(ii) That the petitioner will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

This Court would expect that the petitioner's counsel would honour his undertaking in the instant proceedings regarding supply of the requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

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