

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4446 of 2022

Arising Out of PS. Case No.-453 Year-2021 Thana- PHULWARISHARIF District- Patna

ABHINASH KUMAR @ DABLU Son of Mohan Rai Resident of Village-
Sabajapura, P.S.-Phulwarisharif and District-Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar Pandey, Advocate

For the Opposite Party/s : Mr. A.G

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

2 21-06-2022 Let the defect(s), as pointed out by the office, be
removed within a period of four weeks from today.

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The petitioner seeks bail in connection with
Phulwarisharif P.S. Case No. 453/2021 registered for the
offences punishable under Sections 20/22 of the N.D.P.S. Act.

As per prosecution case, informant alongwith police
personnel were on patrolling duty at about 18.30 P.M. when
they reached near Balmi more, then he received secret
information that some boys are selling intoxicant thereafter at
about 19 P.M. when he reached Sawajpura Krishi Farm when he
saw one person trying to flee away after seeing the police party.
But on chase he was apprehended and disclosed his name



Abhinas Kumar who is the present petitioner and on search, 10 puria (each containing one gram) weighing 10 gram brown sugar was recovered.

Learned counsel for the petitioner has submitted that petitioner is quite innocent and has not committed any offence much less the offence alleged against him and he is simply a victim of false implication in this case only due to sheer of police mechanism and manoeuvring. He further submits that from the F.I.R. itself it is apparent that informant was not sure the seized article is brown sugar or not. It is admitted case of the prosecution that on the basis of statement of apprehended accused the police came on conclusion that said article is brown sugar. In fact nothing has been recovered from the possession of the petitioner that the petitioner has not stated the puria in question is containing brown sugar. From plain reading of the F.I.R. it would be evident that there is no compliance of Section 50 of the N.D.P.S. Act as mandatory under the law. He further submits that from perusal of the F.I.R. as well as seizure list it is very much clear that the alleged seizure list was not prepared before any Gazetted Officer and even no independent person has put his signature on the seizure. He further submits that from the scheduled/notification as mentioned in the N.D.P.S. Act it is also



clear that the Heroin (brown sugar)/smack and its chemical name is diacetoilmorphine the small quantity is five gram and commercial quantity is 250 gram so the alleged recovery is more than small quantity but less than commercial quantity. Learned counsel for the petitioner submits that petitioner is in custody since 29.05.2021 and bears no criminal antecedent. Charge sheet has been submitted in the case and there is no likelihood of tampering the evidence.

The learned A.P.P. for the State opposes the prayer for bail of the petitioner.

Considering the facts and circumstances of the case as well as period of custody and keeping in view clean antecedent of petitioner and also taking into consideration the material available on record, let the petitioner above named be released on bail on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned A.D.J.-XIII Patna, District-Patna in connection with Special Case No. 49/2021 arising out of Phulwarisharif P.S. Case No. 453 of 2021, subject to following conditions:-

(i) One of the bailor shall be either father or mother or sister or brother or wife or the person who sworn the affidavit in



bail application.

(ii) Petitioner will co-operate in trial and will remain present on all dates and absence for two consecutive dates would be a ground for cancellation of bail by the learned Trial court itself.

(iii) If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(Alok Kumar Pandey, J)

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