

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3980 of 2022

Arising Out of PS. Case No.-427 Year-2021 Thana- GARDANIBAG District- Patna

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Anup Rai @ Anup Ray Son of Hulas Ray Resident of Village- Mirampur,
P.S.- Raghapur, District- Vaishali. At present residing at road no.6c, South-
West of State Hospital Gardanibagh, P.S.- Gardanibagh, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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with
CRIMINAL MISCELLANEOUS No. 4086 of 2022

Arising Out of PS. Case No.-427 Year-2021 Thana- GARDANIBAG District- Patna

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Hulash Rai @ Hulash Ray son of late sukhilal ray resident of village -
mirampur, p.s.- Raghapur, Distt.- Vaishali. At Present residing at Road No.6c,
South West of State Hospital Gardanibagh, P.s.- Gardanibagh, Dist.- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :
(In CRIMINAL MISCELLANEOUS No. 3980 of 2022)
For the Petitioner/s : Mr. Jainendra Kumar Pushkar, Advocate
For the Opposite Party/s : Mr. Jitendra Kumar Singh, APP
(In CRIMINAL MISCELLANEOUS No. 4086 of 2022)
For the Petitioner/s : Mr. Jainendra Kumar Pushkar, Advocate
For the Opposite Party/s : Mr. Jitendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER



3 01-07-2022

Cr. Misc. No. 3980 of 2022

Heard learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the State through virtual Court proceedings.

Let the defect(s), if any, be removed within a period of four weeks from today.

The petitioner seeks bail in connection with Gardanibagh P.S. Case No. 427 of 2021 registered for the offence under Section 414 of the Indian Penal Code, Sections 30(A) and 34 of Bihar Prohibition and Excise (Amendment) Act, 2018 and Sections 8, 20(b)(ii)B and 22(ii) of NDPS Act.

The accused/petitioner is named in the F.I.R. and is in custody since 04.12.2021.

The allegation against the petitioner is to involved in the illegal business of illicit liquor where there was a recovery of 32 liters of illicit Chulai liquor and 4.660 kg of Ganja.

Learned counsel appearing on behalf of the petitioner submitted that the petitioner is living separately from where alleged recovery of stolen motorcycle, contraband i.e., Ganja were made. It has further been submitted that petitioner is involved in similar nature of excise case, in which he is on bail. It has further been submitted that the recovery has not been



made from the conscious physical possession of the petitioner as same is from “Khatal”, which is accessible by general public. While concluding the argument, it has been submitted that chargesheet has already been submitted in this case, as such, there is no chance of tampering with the evidence.

Learned APP appearing on behalf of the State while opposing the prayer of bail fairly conceded that the recovery has not been made from the conscious physical possession of the petitioner

Considering the facts and circumstances as mentioned above, as recovery has been made from the “Khatal” of father of the petitioner coupled with the fact that chargesheet has already been submitted in this case, let the petitioner, above named, is directed to be released on bail in connection with Gardanibagh P.S. Case No. 427 of 2021 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, Excise, Patna, subject to the following conditions:

“(i) That accused/petitioner shall not involve in the similar nature of offence till the conclusion of trial, failing which the State shall be at liberty to move before the



Trial Court itself for the cancellation of bail bond of the petitioner.

(ii) Accused/Petitioner shall cooperate in the trial and shall be physically present on each and every date before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on medical ground of the petitioner, duly supported by the documents.

(iii) That one of the bailors shall be Anita Devi, who is the mother of the petitioner and deponent of the present bail petition.”

Cr. Misc. No. 4086 of 2022

Heard learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the State through virtual Court proceedings.

Let the defect(s), if any, be removed within a period of four weeks from today.

The petitioner seeks bail in connection with Gardanibagh P.S. Case No. 427 of 2021 registered for the



offence under Section 414 of the Indian Penal Code, Sections 30(A) and 34 of Bihar Prohibition and Excise (Amendment) Act, 2018 and Sections 8, 20(b)(ii)B and 22(ii) of NDPS Act.

The accused/petitioner is named in the F.I.R. and is in custody since 30.10.2021.

The allegation against the petitioner is to involved in the illegal business of illicit liquor where there was a recovery of 32 liters of illicit Chulai liquor and 4.660 kg of Ganja.

Learned counsel appearing on behalf of the petitioner submitted that petitioner is the owner of the “Kahtal” from where the recovery has been made but it cannot be said that recovery has been made from the conscious physical possession of the petitioner for the reason that the said “Khatal” is accessible to the general public. It has further been submitted that petitioner is involved in one another criminal case, in which he is on bail. While concluding the argument, it has been submitted that chargesheet has already been submitted in this case, as such, there is no chance of tampering with the evidence.

Learned APP appearing on behalf of the State, vehemently, opposes the prayer of bail of the petitioner.

Considering the facts and circumstances as mentioned above, as the said khatal is accessible to general public from



where the alleged recovery has been made, the recovery cannot be said from the conscious physical possession of the petitioner coupled with the fact that chargesheet has already been submitted in this case, let the petitioner, above named, is directed to be released on bail in connection with Gardanibagh P.S. Case No. 427 of 2021 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, Excise, Patna, subject to the following conditions:

“(i) That accused/petitioner shall not involve in the similar nature of offence till the conclusion of trial, failing which the State shall be at liberty to move before the Trial Court itself for the cancellation of bail bond of the petitioner.

(ii) Accused/Petitioner shall cooperate in the trial and shall be physically present on each and every date before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on medical ground of the petitioner, duly supported by



the documents.

(iii) That one of the bailors shall be
Anita Devi, who is the wife of the petitioner
and deponent of the present bail petition.”

(Chandra Shekhar Jha, J)

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