

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4770 of 2022

Arising Out of PS. Case No.-794 Year-2021 Thana- PHULWARISHARIF District- Patna

DHARMENDRA MAHTO @ D.K. S/O LATE DHARIKSHAN MAHTO
RESIDENT OF NORTH SANGAT, YOGIYA TOLA, P.S.
PHULWARISHARIF, DISTRICT- PATNA

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Jha, Advocate

For the Opposite Party/s : Mr. Sunil Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 09-09-2022 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.

Learned counsel for the petitioner is permitted to
correct the prayer portion of the present bail petition, during
course of day.

The petitioner seeks bail in connection with
Phulwarisharif P.S. Case No. 794 of 2021 registered for the
offence under Sections 21(b), 22 and 27 of NDPS Act of the
Indian Penal Code.

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



custody since 17.09.2021.

The allegation against the petitioner is to have in possession of 50 sachets of 'Brown Sugar' weighing about 50 gms.

Learned counsel appearing on behalf of the petitioner submitted that alleged recovery of contraband i.e. 'Brown Sugar' was not made from conscious physical possession of the petitioner. It is also submitted that from perusal of FIR, it appears that the contraband was not for selling purpose rather it was for self consumption. It is also pointed out that compliance of Section 50 of NDPS Act was not made in the present case. It is also submitted that the quantity of alleged recovery is less than commercial quantity, therefore the provisions as mentioned under Section 37 of the NDPS Act is not applicable. It is also submitted that petitioner is a man of clean antecedent. While concluding the argument, it is submitted that investigation of this case has been completed, for which, charge-sheet has already been submitted, as such, there is no chance of tampering with the evidence.

Learned APP, while opposing the prayer of bail, fairly conceded the fact that recovered quantity of contraband is less than commercial quantity.



Considering the facts and circumstances as mentioned above, as compliance of Section 50 of NDPS Act, appears doubtful, where recovered quantity of contraband i.e. 'Brown Sugar' is less than commercial quantity coupled with the fact that charge-sheet has already been submitted, let the petitioner, above named, is directed to be released on bail in connection with Phulwarisharif P.S. Case No. 794 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 Additional District and Sessions Judge - XVII, Patna/concerned court, subject to the following conditions:

“(i) That 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 deponent of the present bail petition.”

(Chandra Shekhar Jha, J)

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