

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17727 of 2022**

Arising Out of PS. Case No.-482 Year-2021 Thana- KOTWALI District- Patna

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Saurabh Tiwary @ Rasgulba S/o Sanjay Tiwary R/o Harding Park, P.S.-
Kotwali, District- Patna, Permanent Resident of Jaitipur, P.S.- Ghosi, Distt.-
Jahanabad

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ram Jiban Pd. Singh, Advocate
For the Opposite Party/s : Mr. Surendra Kumar, APP

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER**

2 08-07-2022 Heard learned counsel appearing on behalf of the

petitioner and learned counsel appearing on behalf of the State.

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

The petitioner seeks bail in connection with Kotwali
P.S. Case No. 482 of 2021 registered for the offence under
Sections 30(a) and 37(b)(c) of Bihar Prohibition and Excise Act
and Sections 18 and 20 of NDPS Act.

The accused/petitioner is named in the F.I.R. and is in
custody since 08.12.2021.

The allegation against the petitioner is to have in



possession of 10 grams of contraband i.e., smack and also to involve in illegal trading of illicit liquor, where 10 liters of illicit country made Mahua liquor was recovered.

Learned counsel appearing on behalf of the petitioner submitted that the recovery of illicit liquor is from hutment of the petitioner, which is jointly occupied and also the quantity of contraband recovered is less than commercial quantity and just above the smaller quantity, therefore, provision of Section 37 of NDPS Act is not attracted. It is submitted that nothing incriminating recovered from the conscious physical possession of the petitioner. It is pointed out that petitioner is involved in two other criminal cases, in which he is on bail. While concluding the argument, it is submitted that investigation in this case is complete for which chargesheet has been submitted, 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 recovery is from jointly occupied hutment of the petitioner and also the contraband i.e., smack recovered is less than commercial quantity.

Considering the facts and circumstances as mentioned above, as recovery cannot be said from the conscious physical



possession of the petitioner, recovered contraband is less than commercial quantity coupled with the fact that chargesheet has already been submitted, let the petitioner, above named, is directed to be released on bail in connection with Kotwali P.S. Case No. 482 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
Gaurab Kumar Tiwary, who is the brother of
the petitioner and deponent of the present
bail petition.”

(Chandra Shekhar Jha, J)

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