

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.21215 of 2022

Arising Out of PS. Case No.-159 Year-2021 Thana- INDUSTRIAL District- Bhagalpur

Md. Babar, Son of Md. Sahbaj, Resident of Village- Fatehpur, Vyapari Tola,
P.S.- Industrial Area, District- Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ansul, Advocate
Mr. Fakhruddin Ali Ahmad, Advocate
For the Opposite Party/s : Mr. Ram Priya Sharan Singh, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

2 30-06-2022 Today this case has been listed on priority basis, on
the motion slip filed by the learned counsel for the petitioner.

Learned counsel for the petitioner is permitted to
remove the defect(s), as pointed out by the office, within a
period of four weeks from today.

Heard Mr. Ansul, learned counsel for the petitioner
and learned APP for the State.

The petitioner seeks regular bail, who is in custody in
connection with N.D.P.S. Case No. 81 of 2021, arising out of
Industrial Area P.S. Case No. 159 of 2021, for the offences
punishable under Sections 20(b)(ii)(c), 22 of the Narcotic Drugs
and Psychotropic Substance Act.



As per prosecution case, it is alleged that the police on secret information raided the house of different persons and on search being made from the house of Md. Shulchuk @ Md. Tanveer 23.500 Kg Ganja, from the house of Md. Shakir @ Paddum 57.500 Kg Ganja and from the house of Md. Tahmeed Alam 78 Kg. Ganja, were recovered. It is further alleged that while raid was being conducted the police saw the petitioner was running away in a lane, who was apprehended by the police. It is further submitted that the petitioner disclosed that he had slept in the house of Md. Tahmeed Alam and on seeing the police, he tried to flee, but he was apprehended. It is further alleged that on interrogation, the police came to know that the brother of petitioner Md. Jami is involved in the trade of Ganja in large scale.

It is submitted by the learned counsel appearing on behalf of the petitioner that from bare perusal of the F.I.R. it is evident that the recovery has been from the house of three named accused persons, namely, Md. Sulchuk @ Md. Tanveer, Md. Shakir and Md. Tahmeed Alam and the petitioner was neither apprehended from the house nor any recovery has been made from the conscious or constructive possession of this petitioner, rather he was apprehended on the road. It has also



come that except the allegation that the petitioner being the brother of Md. Jami, who is said to be involved in the trade of Ganja, there is no material which suggests the complicity of the petitioner in the present crime. It is also submitted that there are various other irregularities while conducting the raid inasmuch as the mandatory provisions under Sections 42, 50, 52 and 55 of the N.D.P.S. Act has not been complied with. It is next submitted that the petitioner is in custody since 03.12.2021, but surprisingly the charge-sheet has been submitted without obtaining FSL report as to whether the alleged recovered substance is Ganja or not. It is lastly submitted that this petitioner is having fair antecedent and is ready to give undertaking that the petitioner will fully cooperate in the trial.

On the other hand, learned APP for the State opposes the bail application and submits that the recovery has been made from the constructive possession of this petitioner inasmuch as during interrogation he disclosed that he was sleeping in the house of Md.. Tahmeed Alam from from where the alleged recovery has been made. It is also submitted that the brother of the petitioner is also found to be indulged in the trade of Ganja.

Having considered the submissions made on behalf of the parties and taking into consideration the fact that the



petitioner was neither apprehended at the spot/house from where the recovery has been made nor there is any material, which suggests the complicity of the petitioner, except the allegation that he being the brother of Md. Jami, inasmuch as this petitioner is in custody since 03.12.2021 and moreover the investigation is completed and charge-sheet has been submitted that too without obtaining the FSL report, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned District & Sessions Judge-cum- Special Judge, N.D.P.S. Act, Bhagalpur in connection with N.D.P.S. Case No. 81 of 2021, arising out of Industrial Area P.S. Case No. 159 of 2021, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-

(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates



without any cogent reason, his bail bonds will liable to be cancelled.

(Harish Kumar, J)

uday/-

U		T	
---	--	---	--

