

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22586 of 2022

Arising Out of PS. Case No.-26 Year-2022 Thana- BARHARA District- Bhojpur

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DHARMENDRA MAHTO Son of Baliram Mahto R/O Village - Saraiya, P.S.- Barhara
(Krishnagarh O.P.), District - Bhojpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Manish Chandra Gandhi
For the Opposite Party/s : Mr.Raj Kishore Singh

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 05-08-2022 Heard learned counsel for the petitioner and learned
APP for the State through virtual court proceeding.

Let the defect (s), as pointed out by the office, be removed within a period of four weeks from the date of resumption of physical filing and physical removal of defect.

In the present case, the petitioner seeks bail in connection with Barhara P.S. Case No. 26 of 2022 registered for the alleged offences under Sections 21(a) of the N.D.P.S. Act, 1985 as well as Sections 30(a) and 36 of the Bihar Prohibition and Excise Act, 2018.

As per prosecution case, the police received information about the petitioner and co-accused selling heroin and illicit liquor. Police chased and apprehended the petitioner and the co-accused and from the possession of this petitioner 0.80 gm of heroin kept in 3 sachet was recovered. From the co-accused 4.75 gm of heroin



and 5 liters of illicit *mahua* liquor and 540 ml of country made liquor were recovered.

Learned counsel for the petitioner submits that petitioner has been falsely implicated in this case. Nothing has been recovered from his conscious possession and whatever recovery has been shown is planted by the informant. The petitioner has got no concern with the seized contraband. There was no compliance of provisions of Sections 43 and 50 of N.D.P.S. Act. Similarly provisions of 100 of Cr.P.C. were also not complied with so whole prosecution story comes under doubt. Moreover, small quantity of heroin is 5 gm and quantity seized was only 0.8 gm which is much less than the small quantity. Similarly no offence under the provisions of Excise Act is made out against this petitioner, as the recovery of illicit liquor has been made co-accused from Dilip Kumar Thakur and not from this petitioner. Charge sheet has been submitted in this case without any chemical report. The petitioner has got clean antecedent and he is aged about 31 years and he is in custody since 09.01.2022.

Learned APP for the State opposes the prayer for bail of the petitioner.

Having regard to the submissions made hereinabove and considering the less than small quantity of heroin which was recovered from this petitioner and submission of charge sheet as



well as period of custody of the petitioner, the petitioner above named is directed to be released on bail on furnishing bail bond of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned First Exclusive Special Excise Court, Bhojpur, Aara in connection with Barhara P.S. Case No. 26 of 2022, subject to the conditions mentioned in Section 437(3) of the Code of Criminal Procedure and also the following conditions:

(i) One of the bailors will be a close relative of the petitioner.

(ii) The petitioner will remain present on each and every date fixed by the court below.

(iii) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bond of the petitioner will be liable to be cancelled by the court concerned.

(Arun Kumar Jha, J)

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