

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23556 of 2022

Arising Out of PS. Case No.-779 Year-2021 Thana- AHIYAPUR District- Muzaffarpur

Raj Kumar Sahani Son Of Late Brij Nandan Sahani, R/O Village- Bijay
Chapra Ward No.-7, P.S.- Ahiyapur, District- Muzaffarpur Petitioner/s
Versus

The State Of Bihar Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bhavesh Kumar, Advocate
For the Opposite Party/s : Mr. Jagdhar Prasad, APP.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 11-08-2022 Learned counsel for the petitioner submits that the typed copy filed with the supplementary affidavit may be ignored, due to the reason that wrong entries are being made in the said typed copy.

Heard learned counsel for the petitioner and learned A.P.P. for the State.

The petitioner seeks regular bail in connection with Ahiyapur P.S. Case No. 779 of 2021 (N.D.P.S. Case No. 04 of 2022) lodged under Sections 8(C) and 21(B) of N.D.P.S. Act.

As per the prosecution story, total 50 purias of *smack* having 23 gm. has been recovered from the possession of the petitioner, on the basis of which the present case has been lodged.

Learned counsel for the petitioner submits that the small quantity for the *smack* as per the schedule mentioned in

the N.D.P.S. Act is 5 gm., whereas the commercial quantity is 250 gm.. In the present case the recovery is in between small quantity and commercial quantity, therefore, section 37 of the NDPS shall not apply in the present case. He further submits that by virtue of supplementary affidavit copy of charge sheet has been filed in this case showing that the charge sheet has been submitted without FSL report and on this ground alone, the petitioner is entitled for bail (default bail i.e. without entering into the merit of the case). In support thereof, learned counsel for the petitioner has placed two orders passed by the Coordinate Bench of this Court dt. 02.12.2021 passed in Cr. Misc. No. 21326 of 2021 (arising out of Dinara P.S. Case No.267 of 2020) and order dated 18.07.2022 passed in Cr. Misc. No. 69369 of 2021 (Purnea P.S. Case No.317 of 2021). In both the cases, this Court has considered bail application and benefit was granted to the petitioner of the respective cases. He further submits that petitioner is in custody in the present case since 09.11.2021 i.e more than 180 days have crossed.

Learned counsel for the State opposes the prayer for bail and only submits that the recovered material is 23 gm., which is greater than smaller quantity but much lesser than commercial quantity.

In the present facts and circumstances of the case and the submissions made above, let the petitioner above named, be granted bail on furnishing bail bonds of Rs.30,000/- (Rupees Thirty Thousand) with two sureties of the like amount each to the satisfaction of learned 2nd Addl. Sessions Judge, Muzaffarpur in connection with Ahiyapur P.S. Case No. 779 of 2021 (N.D.P.S. Case No. 04 of 2022), subject to the conditions as laid down under Section 437(3) of Cr.P.C. with other following conditions:

A. The petitioner shall support in trial and shall appear physically before the lower court on each and every date fixed, in case of non-appearance for two consecutive dates without sufficient cause, shall resulted into cancellation of his bail bond.

B. One of the bailor shall be close relative who shall file affidavit before the court about his relation with the petitioner.

With this observation, the bail application stands allowed.

(Dr. Anshuman, J.)

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