

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.38489 of 2021**

Arising Out of PS. Case No.-79 Year-2021 Thana- BHAGWANPUR District- Kaimur
(Bhabua)

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SHIVJI YADAV, Son of Radhey Yadav, Resident of Village- Gaura, P.S.-
Bhagwanpur, District- Kaimur (Bhabua).

... .. Petitioner/s

Versus

1. The Union Of India
2. The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Jay Prakash Singh, Adv.
For the Union of India	:	Mr.Shyam Bihari Singh, CGC
For the State	:	Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 31-01-2022 Learned counsel for the petitioner undertakes to remove all the defects as pointed out by office within four weeks after start of normal functioning of the Court.

Heard learned counsel for the petitioner, learned counsel for the Union of India and learned A.P.P. for the State.

Petitioner in the present case is seeking regular bail in connection with Bhagwanpur P.S. Case No.79 of 2021 registered for the offences punishable under Sections 8(c)/20(b) (ii)/B/29 of the NDPS Act. He is in custody since 18.04.2021. The petitioner has got no criminal antecedent.

Learned counsel for the petitioner submits that from the First Information Report itself it would appear that the sub-



inspector of police has lodged the case on his own statement and in this case when he was conducting the search there was no independent witnesses on the spot, the seizure list has been prepared taking the two police constables as witnesses without following the established procedure of law under the NDPS Act and the Rules framed thereunder. It is submitted that on mere suspicion it is alleged that some ganja like substance weighing 4 kgs 100 gms was found in possession of the petitioner.

Learned counsel further submits that in any case 4 kgs 100 gms quantity is less than the commercial quantity and as such the rigours of Section 37 of the NDPS Act would not apply in this case. The petitioner has already remained in jail for little more than nine months.

Learned counsel for the Union of India submits that in this case the investigating agency is the State police.

Learned APP for the State has though opposed the prayer for regular bail of the petitioner, but considering the facts and circumstances of the case in which the seizure list witnesses are the two police constables even though the place at which the seizure is made is said to be the main road in front of a hotel, the quantity is much less than the commercial quantity and the twin conditions prescribed under Section 37 (2)(b) of the NDPS Act



would not be attracted, the petitioner is in custody for about 9 months and the investigation against him is complete, let the petitioner above named be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Session Judge-cum-Special Judge, Kaimur at Bhabua in connection with Bhagwanpur P.S. Case No.79 of 2021, subject to the condition as laid down under Section 437 (3) Cr.P.C.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

