

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28840 of 2022

Arising Out of PS. Case No.-323 Year-2021 Thana- SABAUR District- Bhagalpur

Pankaj Sah S/o Arjun Prasad Sah @ Arjun Pra Sah @ Arjun Sah Resident of
Village- Adampur Gahat, P.S.- Josgar, District- Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 28864 of 2022

Arising Out of PS. Case No.-323 Year-2021 Thana- SABAUR District- Bhagalpur

Md. Athar Son of Late Bechu Resident of Village - Chambelichak, Police
Station- Habibpur, District - Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 29256 of 2022

Arising Out of PS. Case No.-323 Year-2021 Thana- SABAUR District- Bhagalpur

Md. Tanweer Son Of Late Md. Bashir R/O Village- Chambelichak, P.S.-
Habibpur, District- Bhagalpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 28840 of 2022)

For the Petitioner/s : Mr.Ranjan Kumar Jha, Advcoate

For the Opposite Party/s : Mr.Rajiv Nayan, APP

(In CRIMINAL MISCELLANEOUS No. 28864 of 2022)

For the Petitioner/s : Mr.Md. Najmul Hodda, Advocate

For the Opposite Party/s : Mr.Ram Sumiran Rai, APP

(In CRIMINAL MISCELLANEOUS No. 29256 of 2022)

For the Petitioner/s : Mr.Md. Najmul Hodda, Advocate

For the Opposite Party/s : Mr.Choubey Jawahar, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL ORDER

5 10-11-2022 Heard learned counsel for the petitioners and learned
APP for the State.



Let the defect (s), as pointed out by the office, be removed within a period of four weeks.

In the present case, the petitioners seek bail in connection with Sabour P.S. Case No. 323 of 2021 registered for the alleged offences under Sections 20(b) (ii) (B) and 25 of the NDPS Act.

As per prosecution case, police received information about co-accused Gautam Mafia purchasing and selling brown sugar in a mango orchard. The raid was conducted at the said place and the co-accused Gautam Mandal @ Gautam Mafia was apprehended and from his possession 98 sachets of smack (brown sugar) and other articles were recovered. This co-accused named petitioner Pankaj Sah as the person who has been supplying brown sugar to him. At the instance of the co-accused, petitioner Pankaj Sah was apprehended and from his possession, apart from other articles 230 grams of smack (brown sugar) was recovered. The petitioner Pankaj Sah further named other two petitioners Md. Athar and Md. Tanweer and other co-accused persons who were also involved in this illicit trade of brown sugar. 40 grams of brown sugar each was recovered from the possession of Md. Athar and Md. Tanweer, apart from other articles.



It is submitted on behalf of the petitioner Pankaj Sah that the petitioner has been falsely implicated in this case and falsity is apparent on face of the record as the petitioner was arrested from a busy locality but no independent witnesses could be found to attest the seizure and both the witnesses on the seizure list are members of the raiding party. There is complete non-compliance of Section 100 of Cr.P.C. Learned counsel further submits that the charge sheet has been submitted in this case without the FSL report. Further no mandatory provisions of search and seizure has been followed. The contraband was allegedly seized on 20.12.21 but the sample was sent to FSL Patna on 18.01.2022. The learned counsel further submits that moreover, even on the facts of the case recovery of the brown sugar like substance is less than the commercial quantity and placed the reliance on the decision of the Supreme Court in the case of Mujeeb Mahaboob vs. State reported in 2013 (2) Crimes, 327. Learned counsel further submits that the petitioner is a student of B.A. (Hons.) and has become victim of the circumstances. He is in custody since 21.12.2021 and is having clean antecedent.

Learned senior counsel appearing on behalf of the petitioner Md. Tanweer and Md. Athar submits that the



petitioners are innocent and have not committed any offence. It is apparent from the FIR that they were apprehended on the basis of the confessional statement of petitioner Pankaj Sah. The seizure list has been prepared in gross violation of Section 100 of Cr.P.C. and both the seizure list witnesses are police personnel and are members of the raiding party. Learned senior counsel further submits that even on the facts of the FIR recovery shown from the petitioners is much below the commercial quantity. The petitioners are having clean antecedent and they are in custody since 21.12.2021.

Learned APP vehemently opposes the submissions made on behalf of the petitioners submitting that the recovery of almost commercial quantity has been made from the petitioner Pankaj Sah whereas lesser quantity of brown sugar has been made from Md. Athar and Md. Tanweer. FSL report has been received and a copy of this report has been placed on record which shows the seized contraband was 'Heroin'.

Perused the records.

Having regard to the facts and circumstances and submissions made on behalf of the parties and further considering the period of custody and clean antecedents of the petitioners and the submission of charge sheet against them, the



petitioners above named are directed to be released on bail on furnishing bail bonds of Rs. 20,000/- (twenty thousand) each with two sureties of the like amount each to the satisfaction of learned Fourth Additional District and Sessions Judge, Bhagalpur in connection with Sabour P.S. Case No. 323 of 2021, subject to the conditions mentioned in Section 437(3) of the Cr.P.C. and the following conditions:

- (i) One of the bailors will be a close relative of the petitioners.
- (ii) The petitioners will remain present on each and every date fixed by the court below.
- (iii) In case of absence for three consecutive dates or in violation of the terms of the bail, the bail bonds of the petitioners will be liable to be cancelled by the court concerned.

(Arun Kumar Jha, J)

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