

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34597 of 2022**

Arising Out of PS. Case No.-114 Year-2022 Thana- MUZAFFARPUR TOWN District-
Muzaffarpur

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Rakesh Kumar @ Rakesh Sahni Son Of Ram Bilash Sahni R/O Mohalla-
Shikendarpur Kundal, P.S.- Town, District- Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. UNION OF INDIA NEW DELHI

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar @ S.K., Advocate

For the Opposite Party/s : Md. Mushtaque Alam, APP

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER**

2 12-08-2022 Heard learned counsel appearing on behalf of the

petitioner and learned counsel appearing on behalf of the State

through virtual Court proceedings.

Let the defect(s), if any, be removed within a period
of four weeks from today.

The petitioner seeks bail in connection with

Muzaffarpur Town P.S. Case No. 114 of 2022 registered for the

offence under Sections 414 and 34 of the Indian Penal Code,

under Sections 30(a) and 36 of the Bihar Prohibition and Excise

Act, 2018 and Sections 8(c) and 21(b) of the N.D.P.S. Act.

The accused/petitioner is named in the F.I.R. and is in

custody since 10.02.2022.



The allegation against the petitioner is to be engaged in illegal trading/manufacturing of illicit liquor, where, there is recovery of 228.525 litres of IMFL/country made liquor and in possession of 7.73 gm. Smack i.e. contraband.

Learned counsel appearing on behalf of the petitioner submitted that while petitioner and his wife visited the house of co-accused, namely, Mukesh Shahni, as a co-villager, incidentally, raid was conducted by police, where petitioner was apprehended. It is submitted that petitioner has been implicated falsely and to make allegations more aggravated, 7.353 gm. of smack was shown in possession of petitioner. It is submitted that as recovery of alleged contraband as smack is much less than commercial quantity, therefore, Section 37 of N.D.P.S. Act, is not attracted. It is submitted that provision under Section 50 of N.D.P.S. Act as regard to search upon the persons, was also not complied with. It is further submitted that both witnesses of the seizure list, are police personnel creating a doubt over entire seizure. It has been submitted that investigation is complete, where charge-sheet has been submitted.

Learned APP, while opposing the prayer of bail, fairly conceded that recovery of illicit liquor was made from the house of co-accused, as per seizure list and recovered contraband i.e.



smack is less than commercial quantity.

Considering the facts and circumstances as mentioned above, as recovery of illicit liquor has not been made from the conscious physical possession of the petitioner, where recovered contraband i.e. smack is less than commercial quantity coupled with the fact that charge-sheet has been submitted, let the petitioner, above named, is directed to be released on bail in connection with Muzaffarpur Town P.S. Case No. 114 of 2022 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, Excise Act Court No.-I, Muzaffarpur/concerned court, subject to the conditions as mentioned under Section 437(3) of Cr.P.C.

(Chandra Shekhar Jha, J)

R.S.Sen/-

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