

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50848 of 2021

Arising Out of PS. Case No.-116 Year-2020 Thana- KATHAIYA District- Muzaffarpur

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Kunal Kumar, S/o Raj Balak Yadav @ Ram Balak Yadav, R/o village-
Batraulia, P.S.- Paroo, Distt.- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan No.II, Advocate

For the Opposite Party/s : Mr. Dashrath Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

3 27-04-2022 Learned counsel for the petitioner is permitted to
remove the defect(s), as pointed out by the office, if any, within
a period of four weeks from today.

Heard learned counsel for the petitioner and learned
APP for the State.

The petitioner seeks regular bail, who is in custody in
connection with Kathaiya P.S. Case No. 116 of 2020 for the
offences punishable under Sections 414, 399, 402/34 of the
Indian Penal Code, Sections 25(1-b)a, 26, 35 of the Arms Act
and Sections 8, 20 and 22 of the Narcotic Drugs and
Psychotropic Substance Act.

As per prosecution case, it is alleged that on



07.09.2020, the police on secret information with regard to assemblage of some miscreants, rushed to the spot and apprehended three accused persons. It is further alleged that from the possession of this petitioner one loaded country made pistol and 250 gm Charas and one mobile phone was recovered.

It is submitted on behalf of the learned counsel appearing on behalf of the petitioner that the petitioner is aged about 19 years and is in custody since 08.09.2020. It is further submitted that so far as recovery of alleged Charas weighing 250 gm is concerned, the same is much less than commercial quantity and, as such, the embargo under Section 37 of the NDPS Act is not attracted. It is further submitted that there is no compliance of Section 50 of the NDPS Act and, moreover, from the case diary it appears that the charge-sheet in the present case has been submitted without obtaining the Forensic Science Laboratory Report and, as such, the incarceration of the petitioner is not justified. It is also submitted on behalf of the petitioner that as per his instruction even before submission of the charge-sheet the sample of the Narcotic Substance has not been sent to the FSL for its examination.

On the other hand, learned APP for the State opposes the bail application of the petitioner and submits that recovery



has been made from the conscious possession of this petitioner and, moreover, he has got three criminal antecedents.

Having considered the submissions made on behalf of the parties and taking into consideration the fact that there is no compliance of Section 50 of the NDPS Act and, moreover, it appears that charge-sheet has been submitted even before obtaining the FSL report, in absence of which the incarceration is not justified inasmuch as this petitioner is in custody since 08.09.2020, aged about 19 years, apart from the fact that in the present case the embargo under Section 37 of the NDPS Act does not attract, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of 1st Additional Sessions Judge, Muzaffarpur in connection with Kathaiya P.S. Case No. 116 of 2020 subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-

(i) The petitioner will cooperate in conclusion of the trial. (ii) He will remain present on each and every date of trial till disposal of the case. (iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial. (iv) In the event of default of two consecutive dates



without any cogent reason, his bail bonds will liable to be cancelled.

(Harish Kumar, J)

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