

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52213 of 2021**

Arising Out of PS. Case No.-71 Year-2021 Thana- HATHAURI District- Muzaffarpur

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Anish Kumar, Son of Shri Rakesh Kumar, R/O Village- Narma, P.S.-
Hathauri, Dist.- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate
		Mrs. Vaishnavi Singh, Advocate
For the Opposite Party/s :		Mr. M. K. Nirala, APP

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 17-08-2022 Learned counsel for the petitioner is permitted to
remove the defect(s), as pointed out by the office, within a
period of four weeks from today.

Heard Mr. Ajay Kumar Thakur, learned counsel for
the petitioner and learned APP for the State.

The petitioner seeks regular bail, who is in custody in
connection with Hathauri P.S. Case No.71 of 2021 registered for
the offences punishable under Sections 20/22 of the Narcotic
Drugs and Psychotropic Substance Act.

As per prosecution case, it is alleged that while the
police party was on night patrolling duty, they apprehended the
petitioner and on search 1 Kg. Charas was recovered from his
possession.

It is submitted by the learned counsel appearing on



behalf of the petitioner that from the tenor of the F.I.R., it is evident that the alleged recovery has been made from a plastic bag, which was said to be carried by the petitioner. However, in the entire prosecution case, it has not been shown as to how the weight of the recovered Charas like substance has been made and in fact an oral assessment has been made by the police with regard to the weight. It is next submitted that prior to the institution of this case, the petitioner was taken by the concerned local police in the police station and when he did not return, the father of the petitioner filed a Misc. Case before the learned Chief Judicial Magistrate, Muzaffarpur, being Misc. Case No. 11 of 2021 on 18.03.2021 with specific allegation that his boy was taken by the police without any rhyme and reason. Learned counsel for the petitioner has drawn the attention of this Court towards the order passed in Misc. Case No. 11 of 2021, which would reflect that on 19.03.2021, a report was called for from the Senior Superintendent of Police, Muzaffarpur and surprisingly soon thereafter on 20.03.2021 this case has been instituted alleging therein that 1 Kg Charas like substance has been recovered from the possession of this petitioner. It is further submitted that there is no independent witness to the seizure list and the witnesses are only the police personnel, apart



from the fact that there is no compliance of Section 50 of the NDPS Act. It is also submitted that only because of the fact that commercial quantity of Charas is 1 Kg, therefore, the police knowingly an oral assessment has been made that 1 Kg. Charas has been recovered, though no specific weight has ever been made by the police. It is next submitted that from the F.I.R. it is also evident that neither the sample has been sent to the Forensic Science Laboratory for its chemical examination nor the charge-sheet has been submitted after obtaining the FSL report, which also vitiates the entire prosecution case. The petitioner is in custody since 20.03.2021.

On the other hand learned APP for the State vehemently opposes the bail application and submits that the recovery has been made from the conscious possession of the petitioner and further he has also been found involved in two other criminal cases, as reflected from paragraph no.3 of the bail application.

Having regard to the submissions made on behalf of the parties and taking into consideration the aforesaid submissions, as also the fact that there is no proper weighing of Charas like substance, inasmuch as prior to the institution of the present case, a Misc. Case was filed by the father of the



petitioner with regard to taking away of the petitioner forcibly by the local police and this case has been instituted when a report was called for from the Senior Superintendent of Police, Muzaffarpur, apart from the other irregularities in the preparation of seizure list and furthermore the charge-sheet has been submitted without obtaining the FSL report, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, NDPS Act, Muzaffarpur in connection with Hathauri P.S. Case No. 71 of 2021, 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 physically 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.



(v) 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 immediate step for cancelling the bail bond of the petitioner. However, the acceptance of bail bonds, in terms of the above-mentioned order, shall not be delayed for this purpose or in the name of verification.

(Harish Kumar, J)

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