

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56364 of 2021**

Arising Out of PS. Case No.-105 Year-2021 Thana- MAGADH MEDICAL COLLEGE
District- Gaya

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Diwakar Kumar Upadhyay, S/O Late Jugal Kishore Upadhyay, R/o village-
Madhopur, P.S.- Bihta, District- Patna. Presently residing at Magadh Colony,
P.S.- Magadh Medical, District- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No.2, Advocate
For the Opposite Party/s : Mr. Umeshanand Pandit, APP

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

9 19-09-2022 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.

2. Heard Mr. Manish Kumar No.2, learned counsel for
the petitioner and learned APP for the State.

3. The petitioner seeks regular bail, who is in custody
in connection with NDPS Case No. 38 of 2021, arising out of
Magadh Medical P.S. Case No. 105 of 2021, registered for the
offence under Sections 8/20(b)(ii)(c) of the Narcotic Drugs and
Psychotropic Substance Act, 1985.

4. The prosecution case is based on a written report
alleging therein that on a secret information the police raided the
under constructed apartment on the plot of Shri Ratan Kumar
Gupta and on search 36 Kg of Ganja allegedly recovered from a



room, which was said to have been kept by the petitioner. The police also apprehended the petitioner from the place of occurrence.

5. Learned counsel for the petitioner submits that from the F.I.R. it would be evident that under construction apartment, in question, belongs to one Ratan Kumar Gupta and this petitioner works there as a guard on a meager salary of Rs.5,000/- and in the said premises, there were altogether five rooms meant for labours and the guard and the alleged recovery has been made from one of the room, which is said to have been occupied by the petitioner, but neither the owner of the apartment has been made accused in this case nor any interrogation has been made from him with regard to correct position of the recovery. He next submits that the petitioner was apprehended on 02.04.2021 and after alleged completion of investigation charge-sheet has been submitted on 25.06.2021 and thereafter investigating officer of the case filed a petition on 02.08.2021 before the court with a request to send the seized sample for FSL examination and the sample was sent pursuant to order dated 03.08.2021. On the basis of the aforesaid facts, learned counsel for the petitioner submits that the entire investigation smack malafide for the simple reason that without obtaining the FSL report, charge-sheet has been submitted,



which is contrary to the Standing Order No. 1 of 1988 wherein Clause 1.33 clearly speaks about dispatch of sample to laboratory.

“1.13 Mode and Time limit for dispatch of sample to Laboratory: The samples should be sent either by insured post or through special messenger duly authorized for the purpose. Despatch of samples by registered post or ordinary mail should not be resorted to. Samples must be dispatched to the Laboratory within 72 hours of seizure to avoid any legal objection.”

6. He further relied upon one of the judgment of this Court passed in Cr. Misc. No. 21326 of 2021 vide order dated 02.12.2021 wherein the similar issue has been dealt with by the learned coordinate Bench of this Court and taking into the account the fact that charge-sheet has been submitted without obtaining the FSL report allowed the privilege of bail to the petitioner of the said case. He next submits that the petitioner, having fair antecedent, is in custody since 02.04.2021 and so far the antecedent of the petitioner, the details of which is mentioned in para. 3, is concerned, he has already been acquitted in the said case, much prior to lodging of the present case. He next submits that nothing has been recovered from the conscious possession of the petitioner and so far the alleged room from which recovery has been shown that does not belong



to the petitioner, rather the same is used for the labours and the petitioner jointly.

7. On the other hand, learned counsel for the State vehemently opposes the bail application and submits that the alleged recovered Ganja comes under commercial quantity and as such the rigors prescribed under the NDPS Act under Section 37 (2) clearly bars the bail in case the prosecution has been able to prove that the petitioner is indulged in the said offence. He also submits that the antecedent of the petitioner also suggests the complicity of the petitioner.

8. Regard being had to the submissions made on behalf of the parties and considering the materials on record specially the fact that the charge-sheet has been submitted without obtaining the FSL report in complete defiance of the standing order and the period of incarceration, as also the recovery, which is said to have been made from the room, which was used by labours and the petitioner jointly on the plot of Sri Ratan Kumar Gupta, 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 Additional Sessions Judge-I, Gaya in connection with NDPS Case No. 38 of 2021, arising out of Magadh Medical P.S. Case No. 105 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 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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