

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61214 of 2021**

Arising Out of PS. Case No.-371 Year-2021 Thana- KANTI District- Muzaffarpur

MD. JABBAR @ MOHAMMAD ZABAR S/O LATE SAHEBJAAN R/o
village- Kanti, Ward No. 1, P.S.- Kanti, District- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Alok Kumar Alok, Advocate

For the Opposite Party/s : Mr. Anil Kumar Singh No. 1, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER**

3 11-04-2022 Heard learned counsel for the petitioner and learned A.P.P.
for the State.

The petitioner seeks bail in a case registered for the offences punishable under Sections 8, 20(b)(ii)(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Learned counsel for the petitioner submits that the petitioner is in custody since 03.06.2021, is a person with clean antecedent and charge-sheet has been submitted.

Learned counsel for the petitioner submits that the allegation is of recovery of 50 gram of Ganja along with 48 sachets of Smack from the petitioner. It is further submitted that as far as recovery of Ganja is concerned, the same is much less than even small quantity and as far as Smack is concerned, the weight of the same is missing in the FIR as well as in the seizure list. Learned counsel, thus, submits that it is the weight of the narcotics based on which it can be culled out whether the alleged seizure is of



commercial quantity, small quantity or less than small quantity but in absence of weight of the narcotics, it is difficult to arrive at a considered conclusion that the seized narcotics were of small quantity, less than small quantity or of commercial quantity. Learned counsel further submits that it absolutely does not stand to reason that when Ganja was weighed why Smack was not weighed. It is, thus, submitted that the officer, who arrested the petitioner, was either not knowing the law relating to NDPS Act or for some ulterior reason had instituted the present case for falsely implicating the petitioner as petitioner is a person with clean antecedent.

In view of the submissions made by the learned counsel for the petitioner, the Senior Superintendent of Police, Muzaffarpur was directed to file counter affidavit by order dated 22.03.2022.

In compliance of the order dated 22.03.2022, a counter affidavit has been filed wherein the Senior Superintendent of Police, Muzaffarpur has accepted that a mistake did take place as the alleged Smack was not weighed for which proper departmental action has been taken against the concerned officer. The counter affidavit further brings on the record the FSL report which records that the alleged seized materials were Ganja or heroin. Thus, learned A.P.P. based on the counter affidavit submits that the petitioner does not deserve bail.

Learned counsel for the petitioner rebuts the submissions of the learned A.P.P. and submits that in absence of the weight of the



Smack, it cannot be said with certainty that the alleged recovered narcotics were less than small quantity, more than small quantity but less than commercial quantity or the narcotics seized were of commercial quantity, thus, submits that in absence of the weight of the narcotics, the petitioner deserves bail.

Considering the fact that the petitioner is in custody since 03.06.2021, is a person with clean antecedent and charge-sheet has been submitted and taking into consideration the submissions made by the learned counsel for the petitioner and also action has been taken against the officer as stated in the counter affidavit, the petitioner, above named, is directed to be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twenty-five Thousand) with two sureties of the like amount each to the satisfaction of learned Court below where the case is pending in connection with Kanti P.S. Case No. 371 of 2021, subject to the condition that one of the bailors shall be the wife (Sakina Khatoon) of the petitioner and if the petitioner gets implicated in the case of similar nature and the same comes to the notice of the learned court below, the learned court below shall forthwith cancel the bail bond of the petitioner.

(Satyavrat Verma, J)

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