

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62716 of 2021

Arising Out of PS. Case No.-404 Year-2021 Thana- AHIYAPUR District- Muzaffarpur

1. RAHUSHAN KUMAR S/o Shyam Sah R/o village- Benibad, P.S.- Beniwad (O.P.), District- Muzaffarpur, Bihar
2. Amarjeet Kumar S/o Chandra Shekhar Singh R/o village- Madhopur, P.S.- Hatauri, District- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Prakash Chandra

For the Opposite Party/s : Mr.Pradeep Narain Kumar

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

4 10-08-2022 Heard learned counsel for the petitioners and learned
APP for the State.

Let the defect (s), as pointed out by the office, be removed within a period of four weeks from the date of resumption of physical filing and physical removal of defect.

In the present case, the petitioners seek bail in connection with Ahiyapur P.S. Case No. 404 of 2021 registered for the alleged offences under Sections 379, 427, 511 and 34 of the Indian Penal Code and under Sections 8(C) /21(B) of N.D.P.S. Act along with Sections 25(1-B)/A/26/35 of the Arms Act.

As per prosecution case, on getting information about



some persons trying to break in the ATM by damaging it, four youths were apprehended and the petitioners were two of the apprehended persons. From the petitioner Roshan Kumar, a country made pistol and two live cartridge were recovered. Apart from this recovery 10 sachet of 'smack' was also recovered from this petitioner. From petitioner Amarjeet Kumar, one live cartridge and 15 sachet 'smack' were recovered. From other co-accused persons apart from other articles 25 sachet of smack were recovered.

Learned senior counsel appearing on behalf of the petitioner submits that the petitioners are innocent and have been falsely implicated in this case. At the time of seizure, no weight of the 'smack' recovered was recorded and it was simply written recovery of 10 and 15 *puria* of 'smack', respectively were made from the petitioners. He further submits that in this case altogether 50 sachet of 'smack' have been recovered. Total weights has been stated to be 25 gm. So on average 0.5 gm ought to be weight in 1 sachet recovered from the petitioner and in this manner from petitioner Roshan Kumar, 5 gm 'smack' and from petitioner Amarjeet Kumar 7.5 gm of smack have been recovered. The small quantity notified in government order is 5 gm. There has been no compliance of any of the statutory



provisions of search and seizure. Charge sheet has been submitted in this case and the petitioners are in custody since 21.06.2021 and they are having clean antecedent. Learned Senior counsel further submits that a supplementary affidavit has been filed for removal of some defects including correction in the name of petitioner Roshan Kumar. He prays for correction in the name of petitioner Roshan Kumar in course of the day. He is allowed to do as prayed.

Learned APP opposes the prayer for bail of the petitioners submitting that the petitioners were apprehended with country made pistol and live cartridge and smack was also recovered from them.

Having regard to the submission made hereinabovoe and considering the quantity of smack recovered stated to be recovered from petitioners and also their period of custody along with submission of charge sheet and the clean antecedent of the petitioner, the petitioners above named are directed to be released on bail on furnishing bail bond of Rs. 20,000/- (twenty thousand) each with two sureties of the like amount each to the satisfaction of learned Additional Session Judge IV, Muzaffarpur in connection with Ahiyapur P.S. Case No. 404 of 2021, subject to the conditions mentioned in Section 437(3) of the Code of



Criminal Procedure and also the following conditions:

- (i) One of the bailors will be a close relative of the petitioners.
- (ii) The petitioners will remain present on each and every date fixed by the court below.
- (iii) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bond of the petitioners will be liable to be cancelled by the court concerned.

(Arun Kumar Jha, J)

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