

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62575 of 2021**

Arising Out of PS. Case No.-405 Year-2021 Thana- AHYAPUR District- Muzaffarpur

Md. Ashik @ Md. Ashiq, Son of Md. Yunus, R/o Mohalla- Laxmi Chowk,
P.S.- Brhampura, Distt.- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shivendra Kumar Sinha, Advocate Mr. Mukesh Kumar, Advocate
For the Opposite Party/s	:	Mr. Tarkeshwar Nath Thakur, APP

**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. Shivendra Kumar Sinha, learned counsel appearing on behalf of the petitioner and the learned APP for the State.

The petitioner seeks regular bail, who is in custody in connection with Ahiyapur P.S. Case No. 405 of 2021 registered for the offences punishable under Sections 272, 273 of the Indian Penal Code, Sections 20/22 of the N.D.P.S. Act and Section 30(a), 36 of the Bihar Prohibition and Excise Act, 2018.

As per prosecution case, it is alleged that on the police on a secret informant that one Munna Kumar kept foreign liquor



in his house, raided his house, however on noticing the police party, the persons started flee away. It is further alleged that co-accused Munna Kumar was apprehended and from his possession 750 Ml foreign liquor was recovered. It is further alleged that the petitioner was also found present there and he was also apprehended by the police and on search 15 packets of smack, which was later on weighed and the same has been found 7 gm, recovered from his possession.

It is submitted by the learned counsel appearing on behalf of the petitioner that in fact no recovery of any smack like substance has been made from the conscious possession of the petitioner, rather the recovery has been made from some other place and on account of past criminal antecedent of the petitioner and due to some altercation, which took place between the police personnel and petitioner, his name has been implicated showing the recovery from his possession. It is next submitted that admittedly the alleged recovered smack like substance is more than smaller quantity, but less than the commercial quantity and as such the rigours provided under Section 37 of the NDPS Act is not applicable in this case. It is further submitted that the charge-sheet has been submitted without obtaining FSL report, which also vitiates the entire



investigation. It is lastly submitted that the petitioner is in custody since 22.06.2021, and moreover the investigation of the crime is completed and the charge-sheet has been submitted.

On the other hand, learned APP for the State opposes the bail application and submits that 7 gm smack has been recovered from the possession of the petitioner and the petitioner has one more criminal antecedent.

Having regard to the submissions made on behalf of the parties and taking into account the fact that the alleged recovery is less than commercial quantity and the rigours provided under Section 37 of the NDPS Act is not applicable in this case and moreover the petitioner in custody since 22.06.2021, though the investigation of the crime is already completed and charge-sheet has been submitted, 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, Excise Act, Muzaffarpur in connection with Ahiyapur P.S. Case No. 405 of 2021, subject to the condition that one of the bailors will be the close relative 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)

uday/-

U		T	
---	--	---	--

