

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67423 of 2021**

Arising Out of PS. Case No.-4 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Aurangabad

PRAMOD PRASAD, Son of Shankar Mahto, Resident of Village - Jhikatiya
Kala, P.O. - Maigara, P.S. - Imamganj, District - Gaya.

... .. Petitioner/s

Versus

The union of India through N.C. B., Patna Branch, Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Yogesh Chandra Verma, Sr. Advocate
For the Opposite Party/s :	Mr. K.N.Singh, A.S.G.I.
	Mrs. Renuka Sharma, C.G.C.
	Mrs. Prakrita Sharma, Advocate
	Mr. Amarjeet, Advocate

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

4 28-04-2022 Heard learned counsel for the petitioner and learned
Central Government Counsel.

The petitioner seeks bail in connection with N.C.B.
Cr. Case No. 04 of 2021 instituted for the offences under
Sections 8 (C) read with 18 (B), 29 of the N.D.P.S. Act,1985.

Learned Sr. counsel for the petitioner submits that the
petitioner is in custody since 26.02.2021, is a person with clean
antecedent and charge-sheet has been submitted in the case.

Allegation is of recovery of 5.25 kg of opium from
the petitioner.

Learned Sr. counsel for the petitioner submits that the
admitted recovery is more than commercial quantity but then



the manner in which the petitioner has been arrested creates a suspicion that as to whether any recovery from possession of the petitioner was made or not.

Learned Sr. counsel submits that from perusal of the allegation as alleged in the FIR, it would manifest that the informant alleges that in terms of Section 50 of the NDPS Act, the petitioner was given an option to be searched in presence of a Gazetted Officer or a Magistrate to which the petitioner agreed to be searched in presence of a Gazetted Officer or a Magistrate and, thereafter, the petitioner was brought to the police station, where he was searched in presence of an SDPO, (a Gazetted Officer) then the recovery is alleged to have been made.

The learned Sr. counsel submits that SDPO may be a Gazetted Officer, but is a police officer and the alleged search and seizure in presence of a police officer does not have any evidentiary value after the judgement passed by the Hon'ble Supreme Court in *Toofan Singh vs. The State of Tamil Nadu reported in 2021 4 SCC page 1* as such the learned senior counsel submits that the entire search stands vitiated.

The learned Additional Solicitor General opposes the bail application and submits that the issue raised by the learned senior counsel is technical in nature and the same cannot be



considered at the time of considering the bail application. It is submitted that the recovery is of opium and that too of commercial quantity and that is also alleged to be from possession of the petitioner in presence of the independent witnesses. The learned Additional Solicitor General further submits that as far as the submission of the learned Senior counsel for the petitioner that the search and seizure was not made at the place of occurrence, the same was not done at the place of occurrence for the reason as the petitioner wanted to get himself searched in the presence of a Gazetted Officer and as such he was taken to the police station.

Considering the submission of the learned Additional Solicitor General, the Court for the present is not inclined to grant privilege of bail to the petitioner, accordingly the bail application is hereby rejected.

(Satyavrat Verma, J)

khushbu/-

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

