

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59395 of 2022

Arising Out of PS. Case No.-139 Year-2022 Thana- CHAND District- Kaimur (Bhabua)

Munna Chouhan, S/o Radhe Chouhan, R/o village- Babhaniyaon, P.S.-
Chand, District- Kaimur at Bhabua

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sri Krishna Prasad Gupta, Police Sub Inspector, Chand Police Station,
District- Kaimur at Bhabua

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashutosh Tripathy, Advocate

For the Opposite Party/s : Mr. Md. Mushtaque Alam, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 14-12-2022 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. Ashutosh Tripathy, learned counsel for the
petitioner and learned APP for the State.

The petitioner seeks regular bail, who is in custody in
connection with Chand P.S. Case No. 139 of 2022 (N.D.P.S.
Case No. 20 of 2022) registered for the offences punishable
under Sections 8(c)/20(b)(ii)/(B)/27(A) of the N.D.P.S. Act,
1985.

Earlier, the petitioner had moved before this Court for
grant of bail in Cr. Misc. No. 46217 of 2022, which was



withdrawn on 15.09.2022, on the instruction of the Pairvikar of the petitioner, on account of some improper instruction.

The prosecution case is based on a written report filed by the informant alleging therein that in course of vehicle checking, the petitioner was apprehended while he was coming on a motorcycle. On search, 950 gms of Ganja was recovered from the dickey of the motorcycle.

Learned counsel appearing on behalf of the petitioner submits that in fact nothing has been recovered from the person or possession of the petitioner, however, in course of vehicle checking, some altercation has taken place between the petitioner and the informant, which resulted into lodging of the F.I.R., showing the recovery from the possession of the petitioner. He further submits that there is no compliance of Sections 42 and 50 of the NDPS Act. He further submits that the alleged recovery is below the commercial quantity and, as such, the rigors provided under Section 37 of the NDPS Act would not be applicable in this case. He next submits that the charge-sheet has been submitted without obtaining the FSL report, which also vitiates the entire investigation. He lastly submits that the petitioner, having fair antecedent, is in custody since 28.05.2022.



On the other hand learned APP for the State vehemently opposes the bail application and submits that the recovery has been made from the conscious possession of the petitioner and the complicity of the petitioner cannot be denied.

Having regard to the submissions made on behalf of the parties and considering the fact that the alleged recovery is below the commercial quantity and rigors provided under Section 37 of the N.D.P.S. Act would not be applicable, apart from the fact that there are infirmities in preparation of the seizure list and moreover the charge-sheet has been submitted without obtaining the FSL report, 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-III-cum-Special Judge, N.D.P.S. Act, Kaimur at Bhabua in connection with Chand P.S. Case No. 139 of 2022, 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.

(Harish Kumar, J)

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