

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71737 of 2021**

Arising Out of PS. Case No.-600 Year-2020 Thana- KHAGARIA District- Khagaria

NIRAJ KUMAR SAH @ NIRAJ KUMAR SAW Son of Prabhu Narayan Sah
Resident of village - Gandhinagar, P.S.- Khagaria, District - Khagaria.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Praveen Kumar Agrawal
For the Opposite Party/s : Mr.Md. Mushtaque Alam

**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER**

3 04-07-2022 Learned counsel for the petitioner is permitted to

make necessary correction in the petition during course of the

day.

Let the defect(s), as pointed out by the office, be

removed within a period of four weeks from today.

Heard learned counsel for the petitioner and learned

A.P.P. for the State.

The petitioner seeks bail in connection with Special
(N.D.P.S.) Case No. 04A of 2020 arising out of Khagaria P.S.
Case No. 600 of 2020 registered for the offences punishable
under Sections 8/20 (b)(ii) (c)/25/29 of the N.D.P.S. Act.

As per prosecution case, 70 gram of smack

powder has been recovered from the possession of co-accused



Niraj Kumar, son of Om Prakash and he is apprehended on the spot. The apprehended accused Niraj Kumar disclosed that present petitioner Niraj Kumar Sah @ Niraj Kumar Saw, son of Prabhu Narayan Sah is partner.

Learned counsel for the petitioner submits that the petitioner has arrested on 26.05.2021 in Maheshkhunt P.S. Case No. 82 of 2021 and after that he is remanded in this case on 30.08.2021 and since then he is in custody. The petitioner bears criminal antecedent of three cases and one case is of similar nature and he is on bail in two cases. Charge-sheet has been submitted in the case and there is no likelihood of tampering the prosecution evidence. Learned counsel further submits that the petitioner is not apprehended on the spot. Nothing has been recovered from conscious possession of the petitioner. The petitioner has been implicated in this case on the basis of disclosure of co-accused Neeraj Kumar son of Om Prakash as petitioner has inimical terms with the said co-accused Neeraj Kumar and petitioner was not present on the alleged place of occurrence which is also evident from perusal of the F.I.R. itself. Seizure list has not been made as per law. Mandatory provision of Section 42 of N.D.P.S. Act has not been complied with. Co-accused Neeraj Kumar son of Om



Prakash Kumar against whom recovery has been made has already been granted bail by the co-ordinate bench of this court vide order dated 04.05.2021 passed in Cr. Misc. No. 1107/2021 and the case of present petitioner stands on better footing.

The learned A.P.P. for the State vehemently opposes the prayer for bail of the petitioner by submitting that petitioner carries criminal antecedent of similar nature.

Considering the facts and circumstances of the case, period of custody, charge sheet has been submitted, petitioner is neither apprehended on spot nor anything has been recovered from the conscious possession of the petitioner and the co-accused Niraj Kumar against whom recovery has been made has been granted bail and also taking into consideration the material available on record, let the petitioner above named 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 Additional Sessions Judge-III-cum-Special Judge, (N.D.P.S.), Khagaria in connection with Special (N.D.P.S.) Case No. 04A of 2020 arising out of Khagaria P.S. Case No. 600 of 2020, subject to following conditions:-



(i) One of the bailors shall be either father or mother or sister or brother or wife or the person who has sworn the affidavit in bail application.

(ii) Petitioner will co-operate in trial and will remain present on all dates and absence for two consecutive dates would be a ground for cancellation of bail by the learned Trial court itself.

(iii) If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(Alok Kumar Pandey, J)

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