

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11290 of 2022

Arising Out of PS. Case No.-160 Year-2021 Thana- PIPRAHI District- Sheohar

Namah Shivay, Male, aged about 20 years, S/o Devendra Bharti R/o village-
Dekuli, Dharampur, P.S.- Piprahi, District- Sheohar, State- Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agarwal, Sr. Advocate Mr. Arvind Kumar, Adv. Mr. Kumar Rajdeep, Adv.
For the State	:	Ms. Meena Singh, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

10 23-01-2023 Heard learned senior counsel for the petitioner and the learned
APP for the State.

The petitioner seeks bail in connection with Piprahi P.S. Case No. 160/2021 registered for the offence punishable under Section 414, 489(B), 420 of the Indian Penal Code (for brevity 'IPC') & Section 8, 8(c), 20(B) (ii) A, 21(b) of the Narcotic Drugs and Psychotropic Substance Act (for brevity 'NDPS Act') and Section 25(1-B), (a), 26, 35 of the Arms Act.

Police has received some information that co-accused, namely, Shivam Kumar, is moving along with his accomplice, a drug smuggler (Namah Shivay, petitioner), and he may be arrested. Upon receiving such information, they have arrived at the house of Rakesh Singh (father of the co-accused). At that place, it is alleged that two persons were found on motorcycle. One has rushed into house, while the other has fled away. The person, who has rushed into the house, has been apprehended (Shivam Kumar). From his possession, there is alleged recovery of one .315 bore country made pistol, two (2) live cartridges, Rs. 100/- note, 250 (two hundred fifty) grams brown



sugar like substance from a 'yellow bag' and 125 gram brown sugar like substance from another bag, some 'charas' like substance has also been recovered in four (4) sachets.

Learned senior counsel for the petitioner submits that petitioner's implication/arrest is based on statement of co-accused, namely, Shivam Kumar. There is no recovery of any incriminating material from the petitioner's possession. He has been arrested nearly two (2) months after the seizure and has no criminal antecedents under the NDPS Act. He has one case u/S 341, 323, 379, 384, 34 of the IPC, in connection with Piprahi P.S. Case No. 282 of 2020. Other than the disclosure statement of co-accused, Shivam Kumar, there is no material against the petitioner whatsoever. Reliance is placed on decision of the Apex Court in the Case of *Tofan Singh vs. State of Tamil Nadu* reported in (2021) 4 SCC 1. It is thus submitted that grounds exist for believing that petitioner is not guilty of the offence, within the parameters specified in Section 37(1)(b)(ii) of the NDPS Act. The petitioner also has no criminal antecedents under the NDPS Act.

Learned State counsel has opposed the prayer for bail. It is submitted that co-accused has stated the petitioner's name as an accomplice. From the co-accused, there is recovery of commercial quantity of contraband. However, she is not in a position to point out that there is any recovery from the petitioner or that he was arrested at the place of recovery.

This Court has allowed the Additional Public Prosecutor (for brevity APP), an opportunity to oppose the application. Insofar as, propensity of the petitioner to commit such offence while on bail, this Court would record that there is no antecedent of the petitioner of offences under the NDPS Act. Insofar as third requirement for lifting the bar to grant of bail under Section 37(1)(b)(ii) of the NDPS Act, this Court, based on submissions advanced by the petitioner's



counsel, as recorded above, is of the view that the petitioner has been able to make out a case for grant of bail within the parameters of Section 37(1)(b)(ii) of the NDPS Act. Prayer for bail of the petitioner is allowed.

Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Session's Judge-cum-Special Judge, in connection with Piprahi P.S. Case No. 160/2021, subject to the following conditions:-

(i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as to how he is related with the petitioner. The bailor will also undertake to inform the Court if there is any change in the address of the petitioner.

(ii) That the petitioner will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

This Court would expect that the petitioner's counsel would honour his undertaking in the instant proceedings regarding supply of the requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

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