

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24326 of 2023

Arising Out of PS. Case No.-411 Year-2022 Thana- KASBA District- Purnia

Md. Azhar @ Guddu @ Md. Zahar Son Of Md. Akhtar Hussain R/O
Jhiruapurwari, P.S.- Simraha, District- Araria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Raj Kumar, Advocate
For the Opposite Party/s : Mr. Lalan Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

4 01-08-2023 Heard Mr. Raj Kumar, learned counsel for the
petitioner and learned APP for the State.

2. Petitioner seeks bail who is in custody since
13.12.2022 in connection with Kasba P.S. Case No. 411 of 2022
for the offences punishable under Sections 8(c), 21(c)/25 of the
N.D.P.S. Act.

3. The case relates to recovery of 440 Grams of
Brown Sugar as well as one motorcycle and Rs. 1,51,940/- from
the possession of the petitioner.

4. Learned counsel for the petitioner submits that
the petitioner is innocent and he has falsely been implicated in
the present case. He further submits that from a bare perusal of
the F.I.R. as well as seizure list that altogether 440 Grams of
Brown Sugar was recovered from the possession of the



petitioner and apart from contraband, motorcycle and Rs. 1,51,940/- was also recovered from the possession of the petitioner. Learned counsel for the petitioner further submits that there is non compliance of Sections 42 and 50 of the N.D.P.S. Act. The petitioner is in custody since 13.12.2022.

5. Learned Additional Public Prosecutor, on the other hand, vehemently opposed the prayer for bail of the petitioner and submits that the recovered contraband is more than the commercial quantity as well as the F.S.L. report also confirms that the recovered contraband is Morphin and hence there is embargo under Section 37 of the N.D.P.S. Act. Further submits that apart from the aforesaid, petitioner carries five more cases other than the present one and out of five cases, the petitioner is an accused in two cases of N.D.P.S. matter and three cases are of another nature.

6. The grant of bail in NDPS cases where the recovery of commercial quantity of narcotic is alleged is circumscribed under Narcotic Drugs and Psychotropic Substance Act, 1985, Section 37 which says that before grant of bail, the Court must have reason to believe that petitioner has not committed the offence and in the event of release he would not commit similar offence.



7. The issue was considered by the Hon'ble Supreme Court in the case of **State of Kerala and Ors. Vs. Rajesh and Ors.** reported in **(2020) 12 SCC, 122** as well as in the case of **Narcotic Control Bureau Vs. Mohit Aggarwal** reported in **AIR 2022 SC 3444** and **Union of India vs. Ajay Kumar Singh @ Pappu** reported in **2023 SCC OnLine SC 3456** dated 28.03.2023.

8. The recovery of huge quantity of *Morphin* recovered would not justify that the petitioner had no knowledge of the narcotic nor there is any material to substantiate that the petitioner would not commit such offence in the event of release.

9. Hence, I am not inclined to enlarge the petitioner on bail in connection with Kasba P.S. Case No. 411 of 2022, pending in the Court of learned Special Judge, N.D.P.S. Act, Purnea.

10. Prayer is refused.

(Rajesh Kumar Verma, J)

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