

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25616 of 2023

Arising Out of PS. Case No.-144 Year-2022 Thana- KHAGARIA RAIL P.S. District-
Khagaria

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GAURAV KUMAR @ MUKESH S/O SHAMBHU PATHAK R/O Village-
Papraur, Ward no. 3. P.S- Barauni, Distt.- Begusarai.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Ritwik Thakur, Advocate Ms. Vaishnavi Singh, Advocate
For the Opposite Party/s	:	Mr. Rina Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 27-07-2023 Heard learned counsel appearing on behalf
of the parties.

2. The petitioner seeks bail in connection with
Rail Khagaria P.S. Case No.144 of 2022 registered for the
offence under Sections 401 and 414 of the Indian Penal Code,
Sections 25(1-b)a, 26 and 35 f the Arms Act and Section 22(b)
of the NDPS Act.

3. The accused/petitioner is named in the F.I.R.
and is in custody since 26.09.2022.

4. The allegation against the petitioner is to
have in possession of 60 pieces of Alprax 0.5 mg Alprazolam
tablet, total quantity 0.015 gram and also alleged to found in
possession of iron cutter, screw drivers, etc.



5. Learned counsel appearing on behalf of the petitioner submitted that drugs which alleged to be recovered from petitioner's possession, not appears in scheduled list of NDPS Act, 1985 and as such, it can be safely said that implication of this petitioner is not convincing. It is submitted that recovered tablets, as alleged may be intoxicant but not a scheduled drug. It is submitted that even the quantity of alleged contraband be taken into consideration, it would not more than commercial quantity and as such the implication of rigorous provision of Section 37 of the NDPS Act not appears to be applicable in the present case. It is submitted that similarly situated co-accused persons, namely, Ravish Paswan @ Kamando and Punit Mahto have already granted bail by different learned co-ordinate Bench of this Court, through Cr. Misc. No. 34099 of 2023 dated 24.06.2023 and Cr. Misc. No.31683 of 2023 dated 24.06.2023, respectively. While concluding the arguments, it is submitted that implication of this petitioner is also for the suspicion, arises from his criminal antecedents, as he found involved in 19 more criminal cases, where, he is on bail, having otherwise no bearing over the merit of this case and moreover, investigation of this case is completed, for which, charge-sheet has already submitted, as



such, there is no chance of tampering with the evidence.

6. Learned APP, while opposing the prayer of bail, submitted that recovered tablet falls under scheduled drug, as it is apparent from the impugned order, where, commercial quantity is 100 gm.

7. Considering the facts and circumstances as mentioned above and by taking note of the fact as recovered quantity is less than commercial quantity coupled with the fact that charge-sheet has already submitted, where, petitioner is in custody since 26.09.2022, let the petitioner, above named, is directed to be released on bail in connection with Rail Khagaria P.S. Case No.144 of 2022, on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge-cum-Additional Sessions Judge-III, Khagaria/concerned court, subject to the condition as mentioned under Section 437(3) of the Cr.P.C. with further conditions:

“(i)That petitioner shall not indulge in any crime till the conclusion of trial, failing which, the State shall be at liberty to move before the Trial Court itself for the cancellation of bail bond of the



petitioner.

(ii) Accused/Petitioner shall cooperate in the trial and shall be physically present on each and every date before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on medical ground of the petitioner duly supported by the documents.

(iii) That one of the bailors of the petitioner shall be deponent of the present bail petition.”

(Chandra Shekhar Jha, J)

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