

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 26294 of 2022**

Arising Out of PS. Case No.-323 Year-2021 Thana- SABAUR District- Bhagalpur

GAUTAM MANDAL @ GOUTAM MAFIYA S/o Ramesh Mandal @ Ramu
Mandal R/o village- Premnagar, P.S.- Sabour, District- Bhagalpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr Rajive Ranjan Singh, Advocate
For the Opposite Party/s : Mr Vinod Shanker Modi, APP

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

5 18-01-2023

Heard learned counsel for the petitioner and learned Additional Public Prosecutor (for brevity, **APP**) appearing for the State of Bihar.

The petitioner seeks bail in Sabour Police Station (for brevity, **PS**) Case No 323 of 2021 registered for the offence punishable under Sections 414/34 of Indian Penal Code and Sections 20 (b) (ii) (B)/25 of Narcotic Drugs and Psychotropic Substances Act.

As per prosecution case, police received information about the petitioner purchasing and selling brown sugar in a mango orchard. The raid was conducted at the said place and the petitioner was apprehended and from his possession 98 sachets of smack (brown sugar) and other articles were recovered. Petitioner named co-accused Pankaj Sah as the person who has been supplying brown sugar to him. At the instance of the petitioner, co-accused Pankaj Sah was apprehended and from his possession, apart from other articles 230 grams of smack (brown sugar) was recovered. Co-accused Pankaj Sah further named other two persons Md Athar and Md Tanweer and other co-accused persons who were also involved in this



illicit trade of brown sugar. 40 grams of brown sugar each was recovered from the possession of Md Athar and Md Tanweer, apart from other articles.

It is submitted on behalf of the petitioner that the petitioner has been falsely implicated in this case and falsity is apparent on face of the record as the petitioner was arrested from a busy locality but no independent witness could be found to attest the seizure and both the witnesses on the seizure list are members of the raiding party. There is complete non-compliance of Section 100 of Criminal Procedure Code (for brevity, *Cr P C*). Learned counsel further submits that the charge sheet has been submitted in this case without the Forensic Science Laboratory (for brevity, *FSL*) report. Further no mandatory provisions of search and seizure has been followed. The contraband was allegedly seized on 20.12.2021 but the sample was sent to FSL, Patna on 18.01.2022. The learned counsel further submits that moreover, even on the facts of the case, recovery of the brown sugar like substance is less than the commercial quantity (32 grams) and placed reliance on the decision of the Supreme Court in the case of *Mujeeb Mahaboob -Versus- State reported in 2013 (2) Crimes, 327*. Learned counsel further submits that the petitioner has become victim of the circumstance. He is in custody since 21.12.2021 and is having clean antecedent. Co-accused Pankaj Sah, Md Athar and Md Tanweer have already been granted bail by this Court by order dated 10.11.2022 passed in Cr Misc No 28840 of 2022 and analogous cases.

Learned APP vehemently opposes the submissions made on behalf of the petitioner submitting that the recovery of 32 grams, more than small quantity, has been made from the petitioner. FSL report has been received and a copy of this report has been placed on record which shows the seized contraband was '*Heroin*'.



Perused the records.

Having regard to the facts and circumstances and submissions made on behalf of the parties and further considering the period of custody and clean antecedents of the petitioner and the submission of charge sheet against him, the petitioner above named is directed to be released on bail on furnishing bail bonds of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of Sessions Judge, Bhagalpur in connection with Sabour P.S. Case No. 323 of 2021, subject to the conditions as mentioned in Section 437 (3) of Cr P C and the following conditions:

(i) One of the bailors will be a close relative of the petitioner.

(ii) The petitioner will remain present on each and every date fixed by the Court below.

(iii) In case of absence for three consecutive dates or in violation of the terms of the bail, the bail bonds of the petitioner will be liable to be cancelled by the Court concerned.

(Madhuresh Prasad, J)

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