

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26850 of 2022**

Arising Out of PS. Case No.-288 Year-2021 Thana- SAHEBPUR KAMAL District-
Begusarai

Sukh Sagar Kumar, Son of Gayani Prasad Yadav, R/O Village- Shaligrami,
P.S.- Sahebpur Kamal, District- Begusarai (BIHAR)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mrs. Archana Sinha @ Archana Shahi, Advocate
For the Opposite Party/s :	Mr. Ram Sevak Choudhary, APP
For the SHO :	Mr. Rajesh Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
C.A.V. ORDER**

4 02-03-2023 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 120(B) and 414 of the Indian Penal Code and Sections 8(c), 21(c), 25 and 35 of the NDPS Act and Sections 25(1-b) a, 26 and 35 of the Arms Act.

Learned counsel for the petitioner submits that the petitioner is a person with clean antecedent and the informant alleges that Sonu, Nitish and Nikhil were arrested and from Sonu five mobiles, 763 gram of brown sugar was recovered and thereafter from his house 761 gram of brown sugar and 437 gram of smack drugs along with country made pistol and the magazine was also recovered along with Rs. 2,80,000/- cash,



from Nitish, mobile along with 7.65 gram of brown sugar was recovered, it is further alleged that from Nikhil five mobiles, 559 gram of brown sugar along with Rs. 60,000/- cash and laptop and 3.67 gram of smack was recovered, it is further alleged that from a vehicle parked outside the house of Sonu, 385 gram of brown sugar was recovered which Sonu accepted as his.

Learned counsel for the petitioner submits that the petitioner is not named in the FIR, nor any of the apprehended accused in their statement have disclosed the name of the petitioner, it is next submitted that from tenor of the allegation as alleged in the FIR, it would manifest that the informant alleges that a car was found parked outside the house of Sonu from which 385 gram of brown sugar was recovered and Sonu accepted the brown sugar belongs to him, it is thus submitted that Sonu accepted the brown sugar belonging to him, further he did not disclose the name of the owner of the vehicle.

Learned counsel for the petitioner submits that police falsely implicated the petitioner on the ground that petitioner is the owner of the said vehicle, the learned counsel for the petitioner next submits that no doubt petitioner is the owner of the said vehicle but the said vehicle was neither parked outside



the house of Sonu, nor the car was in the district of Begusarai at the alleged date and time of occurrence, the learned counsel for the petitioner further submits that the car has a GPS fitted in it, which discloses the location and movement of the car and from the GPS locations it would manifest that the car was at Khagariya, thereafter the petitioner came to his native place at Begusarai on 01.12.2021 itself, it is next submitted that thereafter the car was parked outside his house since there was no parking space in the house of the petitioner, it is next submitted that since the vehicle was parked outside the house the petitioner as such on 02.12.2021 the said car was brought to S. Kamal Police Station on 02.12.2021, it is next submitted that the wife of the petitioner went to the police station for seeking reason as to why the vehicle has been brought to the police station but the SHO without disclosing any reason asked her to come on 03.12.2021. The learned counsel for the petitioner submits that the present occurrence, in which Sonu, Nikhil and Nitish have been arrested, was committed on 03.12.2021 when it is alleged that from the vehicle 387 gram of brown sugar was recovered, the learned counsel for the petitioner next submits that when the vehicle was already in the police station on 02.12.2021 then how come the said vehicle on 03.12.2021 found



parked outside the house of Sonu, it is next submitted that the distance of the police station from the place of occurrence i.e., from the house of Sonu is 10.98 km, but the GPS discloses that on 03.12.2021 the car travelled zero km, thereafter again on 4, 5 and 6 the distance travelled by the car is zero which amply demonstrates that from 03.12.2021 to 06.12.2021 the car had not moved. The learned counsel for the petitioner thus submits that if the vehicle was found parked outside the house of Sonu then why the GPS does not show that on 03.12.2021 the car travelled at least in between 10-11 km, thus it is submitted that this fact amply demonstrates that the vehicle was already taken to the police station on 02.12.2021 as it was parked outside the house of the petitioner thinking it to be an abandoned car even without verifying the details, the learned counsel next submits that it absolutely defies all logic, wisdom and reasonable administrative behaviour that when narcotic was found from the vehicle alleged to be parked outside the house of Sonu then why the informant in the FIR itself did not disclose that the car either belongs to Sonu or to the petitioner or why no investigation or inquiry with respect to the said fact was made on the same day, this omission on part of the police creates doubt with regard to the veracity of the allegations as alleged in the FIR.



By the order dated 08.09.2022, the co-ordinate Bench of this Court directed the Superintendent of Police, Begusarai along with Station House Officer, Sahpur Kamal Police Station to file their respective counter affidavit. In view of the said order, both of them have filed their respective counter-affidavit.

Learned counsel appearing on behalf of the Station House Officer, Sahpur Kamal Police Station, submits that he has brought on record the developments between 02.12.2021 and 03.12.2021, which will demonstrate the bona fide of the deponent in following certain procedure. The order of the Superior Authority and making preliminary examination of the articles seized and subsequent search carried out and thereafter a seizure report was prepared in presence of Superior Authority, which are as under:-

“(i) That on 2nd December 2021 the deponent received an information regarding sell and purchase of contraband articles through a white car by one Sonu Kumar Suman (accused no.3).

(ii) That on the basis of the said information the deponent raided the house of the said Sonu Kumar Suman where one Nitish Kumar and Nikhil Kumar accused number 1 and 2 respectively were also present. Just in front of Sonu Kumar Suman house a Tata Tigor



white car bearing registration number BR-09-AJ-0706 was parked. Upon search made by the deponent number of Pediasure Plastice jar and some torn cash was found. Upon opening the plastice jar, red powder like substance was found. Thereafter the deponent inquired about the said parked car, whereupon said Sonu Kumar Suman handed over the key of the car. Upon searching the car one jar of Pediasure also found in the car.

(iii) That on suspicion the deponent took the car, Pediasure Plastice Jars, torn cash as well as three said named person to the Police Station. Simultaneously, the deponent promptly communicated his superior authority. Thereon, SDPO, Balia along with ALTF (Anti Liquor Task Force) team came at the sport and in there presence further search was carried out.

(iv) That in the morning of 03.12.2021, SDPO, Balia, Circle Officer, Balia in capacity of Magistrate, Circle Inspector, Balia along with Narcotics Drug Detection Kit came to Police Station and on preliminary examination of the suspected articles by Narcotics Drug Detection Kit the substance was found to be in the nature of Morphin Codein (a contraband substance). That, on 03.12.2021 after examining and



ascertaining the entire fact, further search of said Sonu Kumar Suman (accused no.3) house was carried out. Upon which, some more Pediasure Plastic box, 3 yellow colour plastic packet containing light brown colour powder, cash, cash counting machine, some Bihar Police Uniform, magazine, arms and ammunition were recovered and only thereafter seizure report of entire recovered articles, along with car were prepared. Thereafter the present FIR was instituted.

(v) That it is imperative to submit that though the said car was brought to the Police Station in evening of 02.12.2021 and after following the afore-mentioned fact and procedure the seizure of the car was shown on 03.12.2021, which does not suffer from any vice or omission on the part of the deponent.”

He further submits that initially the petitioner was not named in the FIR and he has been added as accused in the present matter since his vehicle has been used for transportation of contraband substance and 385 gm of brown sugar has also been recovered from the vehicle of the petitioner.

The contraband substance has been recovered from the vehicle parked outside the house of accused Sonu Kumar Suman (accused no. 3). Further the petitioner is well known to



Sonu Kumar Suman (accused no. 3) and other two accused persons. Their connections are well established by the Call Detail Reports of their mobile number. The registration certificate of the petitioner’s car bears the mobile number as 9576837282 from which he is in constant touch with the said accused persons further their connection with each other is well demonstrated by the Call Detail Reports of their respective mobile number.

Sukh Sagar Kumar 9576837282	Sonu Kumar Suman 9570908580	01.11.2021 to 02.12.2021 talked 20 times
Sukh Sagar Kumar 9576837282	Nitish Kumar 6395765142 8298249608 9546238065	Talked 171 times
		Talked 1 time
		Talked 6 times

It is submitted that the accused, Nitish Kumar and Nikhil Kumar live in the same residence. They are related to each other. The Call Detail Report is produced during the hearing of the matter. It is further submitted that FSL report dated 22.06.2022 that demonstrate the fact that the seizure articles powder like substance is heroine.

After considering the arguments of the parties, perusal of the case diary and counter affidavit filed by the Superintendent of Police, Begusarai along with Station House Officer, Sahpur Kamal Police Station, It is further submitted that



FSL report dated 22.06.2022 that demonstrate the fact that the seizure articles powder like substance is heroine. I find that there is ample material against the petitioner that the petitioner is also involved in the present case regarding the smuggling and selling of the contraband articles and the petitioner is kingpin in the present case..

Considering the facts and circumstances as well as the materials available on record, I am not inclined to grant anticipatory bail to the petitioner.

The prayer for anticipatory bail of the petitioner is hereby rejected.

However, if the petitioner surrenders before the learned Court below within six weeks from today and seek regular bail, the learned Court below would pass order in accordance with law without being prejudiced by this order.

(Anjani Kumar Sharan, J)

anand/-

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