

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52935 of 2023**

Arising Out of PS. Case No.-52 Year-2023 Thana- ISHUPUR BARAHAT District- Bhagalpur

MD. AFRIDI @ LAKHO SON OF MIR TAIYAB RESIDENT OF VILLAGE
-KARIKADO, PS -SHIVNARAYANPUR, DISTRICT- BHGALPUR

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Md. Anisur Rahman

For the Opposite Party/s : Mr.Ajay Kumar Jha

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

2 24-08-2023 Learned counsel for the petitioner is permitted to remove defect (s), as pointed out by the office, if any, within a period of four weeks on resumption of physical mode.

2. Heard learned counsel for the petitioner and learned A.P.P. for the State.

3. The petitioner has preferred this application for grant of regular bail in connection with Ishipur Barahat P.S. Case No. 52 of 2023 dated 03.04.2023 registered for the offences punishable u/ss 20/22 of the N.D.P.S. Act.

4. As per the prosecution case, total 1 Kg. smack (Brown Sugar) was recovered from the possession of the petitioner.

5. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in



this case. Nothing has been recovered from the conscious possession of the petitioner. The petitioner has no concern with the alleged recovery. The petitioner is accused in one more criminal case as stated in para 3 of the bail petition. The petitioner is in custody since 04.04.2023.

6. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner and submitted that the seized contraband is 1 Kg. which is of commercial quantity.

As per Section 37 of the N.D.P.S. Act, the two conditions are that the Court should be satisfied with :-

(i) There are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) He is not likely to commit any offence while on bail.

If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail. The Court is of the opinion that the parameters of bail available under Section 37 of the Act have not satisfied in the facts of the instant case.

The Hon'ble Supreme Court in the case of **Narcotics Control Bureau v. Mohit Aggarwal 2022 SCC OnLine SC 891** has held that *“The length of the period of his custody or the*



fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the N.D.P.S. Act.”

7. Considering the aforesaid facts and circumstances of the case as well as the recovery of commercial quantity from the from the conscious possession of the petitioner and finding no merit in the contention of the learned counsel for the petitioner, I am not inclined to enlarge the petitioner on bail.

8. This bail application is rejected.

(Chandra Prakash Singh, J)

Alok Verma/-

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