

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63231 of 2022

Arising Out of PS. Case No.-246 Year-2022 Thana- SUGAULI District- East Champaran

Nitesh Mishra, aged about 22 years, Male, S/O Manoj Mishra @ Manoj Kumar Mishra R/O Village- Bhada, P.S- Harsidhi, District- East Champaran, Motihari

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shyameshwar Kumar Singh, Adv.
For the State : Mr. Surendra Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 07-02-2023 Heard learned counsel for the petitioner and the learned APP for the State.

The petitioner seeks bail in connection with Narcotic Drugs and Psychotropic Substances (for brevity N.D.P.S.) Case No. 38 of 2022, arising out of Sugauli P.S. Case No. 246 of 2022 registered for the offence punishable under Section 399, 402, of the Indian Penal Code (for brevity 'IPC') and Section 25(1-B)a, 26, 35 of the Arms Act and Sections 8/20(b)(ii) (c) of the Narcotic Drugs and Psychotropic Substances (N.D.P.S. for short).

Officer-in-charge has stopped one '*scorpio*' vehicle, wherein six (6) persons were allegedly seated. There is recovery of some '*charas*' like substance in three (3) packets, total 1.624 kgs (one kg & six hundred twenty-four grams). From the petitioner, as per seizure memo, there is recovery of one (1) country made pistol and one (1) cartridges.

It is submitted by the petitioner's counsel that the prosecution case itself shows that there is no recovery of any contraband substance from the petitioner's possession. He has no criminal



antecedents and he has remanded in custody since 28.05.2022. In fact, petitioner has become victim of the circumstances, as he was near the place of recovery.

Learned APP for the State has opposed the prayer for bail. It is submitted that from the said vehicle, there is alleged recovery of commercial quantity of contraband substance.

This Court has allowed the Additional Public Prosecutor (for brevity APP), an opportunity to oppose the application. From the seizure memo, relied upon by the petitioner's counsel, recovery of one country made pistol and one live cartridges is attributed against the petitioner. There is no allegation that recovery of any contraband substance is from the petitioner's possession.

Insofar as, propensity of the petitioner to commit such offence while on bail, this Court would record that petitioner has claimed that there is no antecedent of the petitioner of offences under the NDPS Act. Insofar as third requirement for lifting the bar to grant of bail under Section 37(1)(b)(ii) of the NDPS Act, this Court, based on submissions advanced by the petitioner's counsel regarding no recovery from his possession, this Court is of the view that the petitioner has been able to make out a case for lifting the bar and for grant of bail within the parameters of Section 37(1)(b)(ii) of the NDPS Act. Prayer for bail of the petitioner is allowed.

Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge-5, East Champaran, Motihari, in connection with N.D.P.S. Case No. 38 of 2022 arising out of Sugauli P.S. Case No. 246 of 2022, subject to the following conditions:-

- (i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as to how he is



related with the petitioner. The bailor will also undertake to inform the Court if there is any change in the address of the petitioner.

(ii)That the petitioner will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

(Madhuresh Prasad, J)

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