

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73797 of 2022

Arising Out of PS. Case No.-136 Year-2016 Thana- ADAPUR District- East Champaran

RAJESH SAH @ LAL BABU SAH @ RAJESH KUMAR SAH S/o Ramdeo
Sah R/o Village- Sirisiya Mal, P.S.- Nakardei (Adapur), Distt- East
Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh, Advocate

For the Opposite Party/s : Mr. Narendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

2 21-03-2023 Heard learned counsel appearing on behalf of the
parties.

Let the defect(s), if any, be removed within a period
of four weeks from today.

The petitioner seeks bail in connection with Adapur
(Nakardei) P.S. Case No. 136 of 2016 registered for the offence
under Sections 20, 22, 23 and 24 of the NDPS Act.

The accused/petitioner is not named in the F.I.R. and
is in custody since 24.09.2022.

The allegation against the petitioner is to have in
possession of 95 gms of opium powder along with other
unnamed co-accused persons, which was recovered from
motorcycle, alleged in possession of named co-accused,



Gajendra Singh.

Learned counsel appearing on behalf of the petitioner submitted that name of the petitioner surfaced, during course of investigation, on the basis of confessional statement of co-accused, namely, Gajendra Singh, in furtherance of which, no incriminating material surfaced/recovered to connect this petitioner, *prima facie*, with the alleged recovery of opium powder. It is also submitted that as per FIR, the opium/contraband was recovered from the physical possession of named co-accused, namely, Ganjendra Singh. While travelling over the argument, it is submitted that said co-accused, namely, Gajendra Singh has already granted bail by a learned co-ordinate Bench of this Court, through Cr. Misc. No. 15637 of 2017 dated 19.04.2017. It is also submitted that recovered quantity of alleged opium/contraband is less than commercial quantity of 2.5 kg, and as such, barrier of Section 37 of NDPS Act is not applicable in the present case. While concluding the argument, it is submitted that petitioner found involved in one more criminal case, where, he is on bail and moreover, investigation of this case has been completed, for which, charge-sheet has already submitted, as such, there is no chance of tampering with the evidence.



Learned APP, while opposing the prayer of bail, fairly conceded the fact that recovered quantity of alleged opium/contraband is 95 gm, which is less than commercial quantity.

Considering the facts and circumstances as mentioned above, as recovery of alleged opium/contra band is not appears to made from the physical possession of this petitioner, where, recovery of opium/contraband is less than commercial quantity coupled with the fact that charge-sheet has already submitted, let the petitioner, above named, is directed to be released on bail in connection with Adapur (Nakardei) P.S. Case No. 136 of 2016, on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge/Special Judge, NDPS Act, East Champaran at Motihari concerned court, subject to the condition as mentioned under Section 437(3) of the Cr.P.C.

(Chandra Shekhar Jha, J)

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