

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62155 of 2024

Arising Out of PS. Case No.-104 Year-2024 Thana- GAUTAMBUDHNAGAR District-
Siwan

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Sumit Kumar Kushwaha Son Of Chandeshwar Prasad Village- Pokhara, Ps-
Maharajganj, Dist- Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raghav Prasad, Advocate
For the Opposite Party/s : Mr. Nagendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 04-09-2024 Heard Mr. Raghav Prasad, learned Advocate for the

petitioner and learned APP for the State.

2. The petitioner seeks regular bail, who is in custody
in connection with G.B. Nagar P.S. Case No. 104 of 2024
registered for the offences punishable under Sections
399/402/413/414 of the Indian Penal Code, Sections 25(1-
b)a/26/35 of the Arms Act and Section 8/20/21(b)/22 of the
Narcotic Drugs and Psychotropic Substances Act (hereinafter
referred to as ‘the NDPS Act’).

3. The police on a secret information with regard to
assemblage of unknown miscreants, conducted a raid and
apprehended the petitioner and others. On search, from the
possession of the petitioner one country made pistol along with



one cartridge, mobile and 11 sachets of smack like substance weighing 6.61 gms have been recovered. It is also alleged that from the possession of the petitioner, a Hero Honda Passion motorcycle, bearing registration no. BR 04X 9316 has been recovered.

4. There is total denial of recovery from the possession of the petitioner. Learned Advocate for the petitioner contended that the petitioner is a teenage, having pursuing his study in Intermediate and on the alleged date of occurrence, while the police conducted raid, he was found at the place of occurrence and thereafter his name has been implicated in this case showing the recovery. So far the recovery of 6.61 gms smack like substance is concerned, the same is though just above the small quantity, but much below the commercial quantity and, as such, rigors provided under Section 37 of the NDPS Act requiring the compliance of twin principle is not applicable. Moreover, the witnesses are none else, but the police personnel. It is next contended that even the quantity has been measured along with the sachets and thus the measurement has not been done in a rightful manner. Apart from various other infirmities in search and seizure, coupled with the non-compliance of mandatory provisions of Section 50 of the NDPS



Act. Be that as it may, now the petitioner has been incarcerated since 11.03.2024.

5. On the other hand, learned APP for the State vehemently opposes the bail application and submits that the criminal antecedent of the petitioner in three identical matters speaks loud about his complicity, irrespective of the fact that the petitioner is aged about 19 years.

6. Regard being had to the submissions made on behalf of the parties and considering the fact that the alleged recovered smack like substance is much below the commercial quantity, coupled with the infirmities in search and seizure and the period of custody, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge, NDPS, Siwan in connection with G.B. Nagar P.S. Case No. 104 of 2024, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-

(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain present on each and every date of trial till disposal of the case.



(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(Harish Kumar, J)

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