

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63626 of 2024

Arising Out of PS. Case No.-283 Year-2023 Thana- BARHARIA District- Siwan

Asraful Mian @ Asarul Mian @ Asarul @ Esrarul Mian @ Esrarul Haque @
Asarul Haque Son of Anwar Main @ Anwarul Mian @ Sheikh Anwarul R/O
Vill.- Malik Tola, P.S.- Barharia, Dist.- Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Satyendra Rai, Advocate

For the Opposite Party/s : Mr. Uma Shankar Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

2 04-10-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner seeks regular bail, who is in custody
in connection with Barharia P.S. Case No. 283 of 2023
registered for the offences punishable under Sections 399, 402
and 414 of the Indian Penal Code and Sections 25(1-b)a, 26 and
35 of the Arms Act as well as Section 20(b)(ii)(B) of the
N.D.P.S. Act.

3. The police on a secret information regarding
assemblage of miscreants, raided the place of occurrence,
however, noticing the police party, out of four accused persons,
one of them succeeded in fleeing away and three persons
including the petitioner were apprehended. On search, one
loaded country made pistol with two cartridges and a bag
containing 500.700 gram *charas* like substance were recovered.



4. It is contended on behalf of the petitioner that from the narrations made in the FIR, it is evident that one of the co-accused persons who was present at the place of occurrence succeeded in fleeing away. However, despite the fact that nothing has been recovered from the possession of the petitioner, the prosecution has alleged that the bag containing *charas* like substance and a loaded pistol with two cartridges have been recovered from the possession of the petitioner. There is no compliance of the mandatory provision of Sections 42 and 50 of the NDPS Act. The alleged recovered *charas* like substance is much below the commercial quantity and, as such, the rigors provided under Section 37 of the NDPS Act would not attract. It is further contended that sample of the *charas* like substance was sent to FSL on 10.11.2023 but the police has submitted charge-sheet without the FSL report on 01.01.2024. It is also contended that only because of criminal antecedent, the name of the petitioner has been implicated in this case, however, referring to para-3 of the bail application, learned counsel for the petitioner submitted that the petitioner had never been involved in any case in relation to NDPS Act. Be that as it may, now the petitioner is in custody since 20.07.2023 and the investigation of the crime is complete. It is lastly contended that one of the co-accused person, having identical allegation from



whose possession a loaded country made pistol and a bag containing 484.100 gram *charas* like substance has been recovered, has been allowed the privilege of regular bail by this Court in Cr. Misc. No. 53213 of 2024 vide order dated 07.08.2024, the copy of which has been marked as Annexure-P/2.

5. On the other hand, learned counsel for the State vehemently opposed the bail application and submitted that apart from a loaded country made pistol, 500.700 gram *charas* has also been recovered.

6. Regard being had to the submissions made on behalf of the parties and considering the period of custody and the alleged recovered substance is below the commercial quantity, thus, the rigors provided under Section 37 of the NDPS Act would not attract in the present case; the charge-sheet has been submitted but without FSL report, apart from non-compliance of Sections 42 and 50 of the NDPS Act, coupled with the fact that the co-accused person having identical allegation has been allowed the privilege of bail, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.25,000/- (Twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge (NDPS), Siwan in connection with Barharia P.S.



Case No. 283 of 2023, 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.

(v) The court below shall verify the criminal antecedent of the petitioner and in case, at any stage, it is found that the petitioner has concealed his criminal antecedent, the court below shall take immediate step for cancelling the bail bond of the petitioner. However, the acceptance of bail bonds, in terms of the above-mentioned order, shall not be delayed for this purpose or in the name of verification.

(Harish Kumar, J)

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