

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68609 of 2024

Arising Out of PS. Case No.-738 Year-2023 Thana- FORBESGANJ District- Araria

1. Md. Parvej Son of Imamuddin Resident of village -Rampur police station- Forbesganj District- Araria
2. Md. Ida @ Ida Babu @ Md. Ida Babu Son of Md. Yakub Resident of village -Rampur police station- Forbesganj District- Araria

... .. Petitioner/s

Versus

The State of Bihar bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr.Ramesh Kumar Singh
For the Opposite Party/s :	Mr. Aditya Narayan Singh.1
	Mr. Chandra Bhusan Prasad

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

5 18-07-2025 Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in a case in connection with Forbesganj P.S. Case No. 738 of 2023 dated 09.08.2023 for the offence/s punishable u/ss 406, 420, 467, 468, 471, 413, 414, 120B of the IPC, sections 21(C), 22C, 22 of the NDPS, sections 25(1-B) (a), 26 and 35 of the Arms Act, section 30(a) of the Bihar Prohibition and Excise Act and sections 3 and 13 of the Foreign Exchange Management Act.

3. As per the prosecution case, the informant got information that the co-accused Md. Mubarak has kept brown sugar along with other narcotic substance as well as huge quantity of illegal fire arm in his house. On that, the senior police officials registered



the sanha and along with his team raided at the house of Md. Mubarak and apprehended a minor boy sitting on the door and a country made katta along with the live cartridge were recovered from his possession. Seeing the police official, Md. Mubarak escaped from the house. Thereafter, police started searching the room of Md. Mubarak and recovered a pistol having magazine (made in the USA) and 5 live cartridges in the magazine, a blank magazine and 3 live cartridges. A purse was also recovered below the pillow in which Aadhar Card, driving licence, 2 voter ID cards of different numbers of Md. Mubarak, registration card of vehicle bearing registration number BR 38K 9604, PAN card, a blank cheque of PNB and Axis Bank, 3 ATM card of Axis bank, 3 ATM card of SBI on the name of Md. Mubarak, SIM Cards, Aadhar card of other persons, currency of Myanmar and total 345 grams of brown sugar were recovered. In a Hyundai Car of Md. Mubarak which was parked in front of the door, in the dicky of the front seat brown sugar, 3 fired cartridges, and less than half a bottle of Nepali wine were recovered. On the back seat of the car, a long length fire arm was also recovered. A Bullet motorcycle without having registration number was standing in front of the door and from the tool box of the said motorcycle, 2 live cartridges were recovered. From the Dickey of the Pulsar Motorcycle 3 fired cartridges and 2 live cartridges were recovered. Juvenile disclosed that all the articles which are recovered belongs to Md. Mubarak.



4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioners. It is further submitted that the co-accused Md. Mubarak has inimical term with the petitioners and earlier Md. Mubarak had instituted a case against the petitioner no. 1 bearing Forbesganj P.S. Case No. 593 of 2018 due to that he implicated the petitioners in this case. Learned counsel has submitted that no case is made out against the petitioners. The said recovery was made from the house of the co-accused Md. Mubarak. There is no material against the petitioners except the confessional statement of the Md. Mubarak. The petitioner no. 1 has one criminal antecedent and the petitioner no. 2 has no criminal antecedents as stated in para 3 of the bail petition.

5. Learned A.P.P. for the State has vehemently opposed the prayer for anticipatory bail of the petitioners. It is further submitted that on the basis of the confessional statement of the co-accused Md. Mubarak, the petitioner is also indulged in the business of Narcotics Drugs and Psychotropic Substance and and fire arms weapons. The seized contraband is of commercial quantity i.e. 345 grams of brown sugar like substance. Learned APP for the State also placed reliance on the judgment in the case of ***Hira Singh and Anr. Vs. Union of India and Anr, (2020)20 Supreme Court Cases 272*** of Hon'ble Apex Court has held that "Brown sugar/smack is usually



made available in power form. The substances is only about 20 per cent heroin. The heroin is mixed with other substances like chalk powder, zinc oxide, because of these, impurities in the drug, brown-sugar is cheaper but more dangerous”. It is further submitted that as per entry 56 of the list of NDPS Act, small quantity of brown Sugar as defined is 5 gram and commercial quantity of brown sugar as defined is 250 gram.

6. 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.

7. 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.*”

8. Considering the aforesaid facts and circumstances of the case as well as the material available on record, I am of the view



that no case for grant of anticipatory bail is made out and the same is disposed of with direction to the petitioners to surrender before the Court below concerned within six weeks from the date of this order and the prayer for regular bail, the learned Court below may consider his prayer for regular bail in accordance with law and on its own merits without being prejudiced by this order.

9. The application stands disposed of.

(Chandra Prakash Singh, J)

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