

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26327 of 2022

Arising Out of PS. Case No.-281 Year-2022 Thana- MADHEPURA District- Madhepura

1. BABUL KUMAR @ BABLU KUMAR SON OF SUBHASH YADAV R/O VILLAGE- BHARRAHI, P.S.- MADHEPURA (BHARRAHI O.P.), DISTRICT- MADHEPURA
2. RAJ KUMAR @ RAJ KUMAR YADAV SON OF RAJA RAM YADAV @ RAJENDRA YADAV R/O VILLAGE- BHARRAHI, P.S.- MADHEPURA (BHARRAHI O.P.), DISTRICT- MADHEPURA

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Barun Kumar Singh
For the Opposite Party/s : Mr.Madan Kumar

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

4 17-10-2022 Let the defect(s), as pointed out by the office, be removed within a period of four weeks from today.

Heard learned counsel for the petitioners and learned A.P.P. for the State.

The petitioners seek bail in connection with Madhepura (Bharrahi O.P.) P.S. Case No. 281 of 2022 registered for the offences punishable under Sections 414 of the Indian Penal code read with Section 21(b)/22(b) of the N.D.P.S. Act and Section 30(a) of the Bihar Prohibition and Excise Amendment Act.

As per prosecution case, there is alleged



recovery of 110 bottles of Codeine Phosphate Triprolidine Hydrochloride Syrup each containing 100 ml from the maize field of Bhushan Yadav. Petitioner no. 1 is apprehended on spot and he disclosed the name of persons who fled away as petitioner no. 2 and others.

Learned counsel for the petitioners submits that petitioner no. 1 is in custody since 20.03.2022 and petitioner no. 2 is in custody since 23.03.2022. Petitioner no. 1 bears no criminal antecedent and petitioner no. 2 bears criminal antecedent of one case. Learned counsel further submits that nothing has been recovered from the possession of the petitioners. Recovery has been made from maize field which does not belong to the petitioners. Learned counsel further submits through supplementary affidavit that there is alleged recovery of 110 bottles of 100 ml which is 11 liters. 5ML Syrup contains 9.948 mg codeine phosphate. Therefore, quantity of codeine phosphate in 100ML bottle = $20 \times 9.948 \text{ mg} = 198.96 \text{ mg}$, so the total recovered quantity in 110 bottles is $110 \text{ bottles} \times 198.96 \text{ mg} = 21885.6 \text{ mg}$ i.e. 21.8856 gm codeine which is more than small quantity and less than commercial



quantity which is 1 KG. Learned counsel further submits that the informant is not the competent authority to make search and seizure as per the provisions of Section 42 and 43 of the N.D.P.S. Act. The provisions of Section 100(4) Cr.P.C. has also been not complied with at the time of search and seizure.

The learned A.P.P. for the State vehemently opposes the prayer for bail of the petitioners.

Considering the facts and circumstances of the case as well as period of custody, argument advanced on behalf of the parties and also taking into consideration the material available on record, let the petitioners above named be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge-cum-Special Judge NDPS Act, Madhepura in connection with Madhepura (Bhrrahi O.P.) P.S. Case No. 281 of 2022, subject to following conditions:-

(i) One of the bailors shall be either father or mother or sister or brother or wife or the person who has sworn the affidavit in bail application.



(ii) Petitioners will co-operate in trial and will remain present on all dates and absence for two consecutive dates without appropriate permission would be a ground for cancellation of bail by the learned Trial court itself.

(iii) If the petitioners tamper with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(iv) If the petitioners are found involved in similar nature of offences in future, the learned trial court shall be at liberty to cancel his bail bond.

(Alok Kumar Pandey, J)

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