

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47493 of 2021

Arising Out of PS. Case No.-433 Year-2021 Thana- KHAJANCHI HAT District- Purnia

1. IQUBAL HASAN @ AMAN Son of - Md. Sarfaraj Alam Resident of village - Mahboob Khan Tola, P.S. - K. Hat, District - Purnea, State - Bihar.
2. MD. DAUD @ MD. SABIR S/o Md. Munna @ Md. Shahid Resident of - Arabia College, Madhopara, P.S. - K. Hat, District - Purnea, State - Bihar.
3. MD AKRAM S/o- Late Abu Bakar Resident of - Bhatta Bazar, Maliyabadi, P.S. - K. Hat, District - Purnea, State - Bihar.
4. MD. ARIF @ CHINTU S/o Late Md. Arij Resident of - Kasai Mohalla, Line Bazar, P.S. - K. Hat (Sahayak), District - Purnea, State - Bihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Adv

Ms. Preety Kunwar, Adv

For the Opposite Party/s : Mr. Umesh Lal Verma, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 25-02-2022 Today being Friday, matters are being taken up through virtual mode as per current procedure for hearing.

Heard learned senior counsel for the petitioners and learned APP for the State.

This Court would expect that the petitioners' counsel would honour his undertaking in the instant proceedings regarding supply of requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

Petitioners seek bail in connection with Special Case No. 36 of 2021 (NDPS Act) arising out of K.Hat (Sahayak) P.S.



Case No. 433 of 2021 registered under Section 30(a) of the Bihar Prohibition and Excise Act, Sections 275, 276/34 of the Indian Penal Code and Section 21(c) of the Narcotic Drugs & Psychotropic Substance Act.

The prosecution case alleges a large quantity of cough syrup being recovered from a transport *godown*.

The learned senior counsel for the petitioners submits that as per prosecution case, the proprietor of the transport *godown* who was also owner of the premises wherein the vehicle was parked loaded with cough-syrup, has himself explained the presence of cough syrup. The prosecution case itself records his statement that he was transporting the same. From the F.I.R., it is apparent that only presence of the petitioners at the *godown* has been noted and apart from that, there is no allegation whatsoever against the petitioners.

The learned APP has opposed the prayer for bail submitting that 15220 bottles (1522 litres) cough syrup containing Codeine Phosphate and Chlorpheniramine Malcate has been recovered and the petitioners were present at the time and place of recovery.

The Court has considered the rival submissions and examined the material on record. No doubt there is recovery of a



large/commercial quantity of cough syrup but as per prosecution case, the *godown* owner who happens to be owner of the premises also, has himself accepted that the medicine was being transported by him in discharge of professional obligation. Arrest of the petitioners, therefore, in the aforesaid circumstances, is apparently based only on their presence in the premises in question. There is also specific averment in the application that the petitioners have no criminal antecedents and therefore there is no material to conclude that petitioners are likely to commit any offence while on bail. There is no recovery from the conscious possession of the petitioners also. The petitioners are stated to be in custody since 28.05.2021, and investigation is stated to be complete.

This Court has given ample opportunity to the learned APP to oppose the application for bail. Having done so, and for the above noted reasons this Court for the limited purposes of lifting the bar on release on bail contemplated under Section 37 of the Act is satisfied that there is reasonable grounds for believing that requisite grounds under Section 37(b) exists.

Case is thus made out for grant of bail and petitioners' prayer for bail is allowed. Let the petitioners above named be released on bail on furnishing bail bonds of Rs. 10,000/- (Ten



thousand) each with two sureties of the like amount each to the satisfaction of learned Special Judge, N.D.P.S. Act, Purnea in Special Case No. 36 of 2021 (NDPS Act) arising out of K.Hat (Sahayak) P.S. Case No. 433 of 2021, subject to the following conditions:-

(i) That one of the bailors will be a close relative of the petitioners who will give an affidavit giving genealogy as to how he is related with the petitioners. The bailor will also undertake to inform the Court if there is any change in the address of the petitioners.

(ii) That the petitioners will be well represented on each date and if they fail to do so on two consecutive dates, their bail bond will be liable to be cancelled.

(Madhuresh Prasad, J)

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