

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42055 of 2022

Arising Out of PS. Case No.-40 Year-2022 Thana- SAMSTIPUR RAIL P.S District-
Samastipur

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1. Musharaf Hussain, Son of Late Bhuttu Sheikh, R/O Village- Mohammadpur @ Mobatpur, P.S.- Kalia Chowk, District- Malda, West Bengal
 2. Wasim Akram, Son of Motiur Rahman, R/O Village- Mohammadpur @ Mobatpur, P.S.- Kalia Chowk, District- Malda, West Bengal

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Raja Ram Mishra, Advocate

For the Opposite Party/s : Mr.Uday Chand Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL ORDER

2 04-11-2022 Heard learned counsel for the petitioners and learned
APP for the State through video conferencing.

Let the defect (s), as pointed out by the office, be
removed within a period of four weeks.

In the present case, the petitioners seek bail in
connection with Samastipur Rail P.S. Case No. 40 of 2022
registered for the alleged offences under Sections 27(b)(ii),
27(d), 28 and 28(A) of the Drugs and Cosmetic Act, 1940 and
Section 21(b) of the N.D.P.S. Act, 1985.

As per prosecution case, from the petitioners, who
were travelling on a train, 250 bottles of Phensedyl New Cough
Linctus containing codeine were recovered. Each bottle



contained 100 ml of cough syrup. The petitioners did not show any papers for the same. Recovery of 100 bottles of cough syrup was made from petitioner Musharaf Hussain and recovery of 150 bottles was made from petitioner Wasim Akram.

The learned counsel for the petitioners submits that the Phensedyl cough syrup is not a prohibited drug and since it contains codeine, the provisions of NDPS Act have been applied which is not proper or correct. The cough syrup seized by the police is medicine and is governed by the Drugs and Cosmetic Act. The Drug Inspector had no authority to seize the substance under the NDPS Act. Learned counsel further submits that even on the facts of the FIR, it is clear that petitioners are innocent and have been falsely implicated in this case since no recovery has been made from the conscious possession of the petitioners. The bottles of cough syrup were lying in abandoned condition in a coach of the train and the police apprehended the petitioners merely on suspicion. Charge-sheet has been submitted in this case and the petitioners are in custody since 01.03.2022. The petitioners are having clean antecedent.

Learned APP opposes the prayer for bail.

Having regard to the submissions made



hereinabove and considering the nature of recovery and also considering the clean antecedent of the petitioners along with their period of custody and submission of charge-sheet, the petitioners above named are directed to be released on bail on furnishing bail bonds of Rs. 20,000/- (twenty thousand) each with two sureties of the like amount each to the satisfaction of learned Special Judge, NDPS Act, Samastipur in connection with Samastipur Rail P.S. Case No. 40 of 2022, subject to the conditions mentioned in Section 437(3) of the Code of Criminal Procedure and also the following conditions :

- (i) One of the bailors will be a close relative of the petitioners.
- (ii) The petitioners will remain present on each and every date fixed by the court below.
- (iii) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bonds of the petitioners will be liable to be cancelled by the court concerned.

(Arun Kumar Jha, J)

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