

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71286 of 2021

Arising Out of PS. Case No.-247 Year-2021 Thana- BAISI District- Purnia

Sanjay Modak, Son of Andharu Lal Modak, Resident of Village- Majlishpur,
P.S- Gawal Pokhar, Dist- Uttar Dinajpur (W.B)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Amal Kumar Sinha, Advocate

For the Opposite Party/s : Mr.Ashok Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

3 12-10-2022 Heard learned counsel for the petitioner and learned
APP for the State.

Let the defect (s), as pointed out by the office, be removed within a period of four weeks from the date of resumption of physical filing and physical removal of defect.

In the present case, the petitioner seeks bail in connection with Special Case No. 67 of 2021 arising out of Baisi P.S. Case No. 247 of 2021 registered for the alleged offences under Sections 272, 273, 274, 275 and 276 of the Indian Penal Code and Section 21(b) of the N.D.P.S. Act.

As per prosecution case, during regular checking of vehicles, a pickup container being driven by this petitioner was intercepted and searched. From this vehicle, 74 cartons each containing 140 bottles containing 100 ml of cough syrup in each



bottle containing codeine were recovered. The petitioner and other two co-accused persons were apprehended.

Learned counsel for the petitioner submits that petitioner is innocent and has been falsely implicated in this case. No recovery has been made from the conscious possession of this petitioner. The owner of the seized vehicle is having medicine agency and he is authorized to supply the medicines to the shopkeeper. This petitioner is merely a driver and he is illiterate person and he has no knowledge about the type of medicines packed in the cartons and being transported by him. The owner of the medicine agency ordered the petitioner to transport the consignment along with two other staffs of the medical agency who were also apprehended with this petitioner. Learned counsel further submits that even on the facts of the case, the prosecution story is not sustainable. No notice under Section 50 was served and there is total non-compliance of this mandatory provision of the N.D.P.S Act. It has nowhere been mentioned what was the quantity of codeine contained in seized syrup as each 100 ml bottle of the medicine contained codeine phosphate and chlorpheniramine maleate syrup which is a cough syrup and would not be covered under the notification of the central government regarding banned narcotic drugs and



psychotropic substance. As the prosecution has failed to mention the quantity of narcotic drugs or psychotropic substance while making seizure, prosecution could not be sustained under the provisions of the N.D.P.S Act. Learned counsel further submits that the similarly placed co-accused persons who were also arrested from the vehicle have been granted bail vide order dated 05.07.2022 passed in Cr. Misc. No. 14728 of 2022 by a Coordinate Bench. Charge sheet has been submitted in this case and the petitioner is in custody since 30.08.2021 and he is having clean antecedent.

Learned APP for the State opposes the prayer for bail of the petitioner submitting that huge quantity of cough syrup has been recovered from the vehicle driven by the petitioner.

Perused the records.

Having regard to the facts and circumstances and submission made on behalf of the parties and considering the clean antecedent of the petitioner and further considering his period of custody along with submission of charge sheet, the petitioner above named is directed to be released on bail on furnishing bail bond of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, N.D.P.S. Act, Purnea in connection with Special



Case No. 67 of 2021 arising out of Baisi P.S. Case No. 247 of 2021, 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 petitioner.
- (ii) The petitioner 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 bond of the petitioner will be liable to be cancelled by the court concerned.

(Arun Kumar Jha, J)

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