

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40139 of 2023

Arising Out of PS. Case No.-26 Year-2023 Thana- TATARPUR District- Bhagalpur

Pappu Mishra @ Dhananjay Mishra Son Of Shardachandra Mishra Resident
Of Mohalla - Jagarnath Suri Lane, Mandroja Chouk, P.S. - Tatarpur, Dist. -
Bhagalpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Akash Kumar Mishra, Advocate

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

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

3 21-07-2023 Learned counsel for the petitioner is permitted to

remove defect (s), as pointed out by the office, if any, within a

period of four weeks.

2. Heard learned counsel for the petitioner and learned
A.P.P for the State.

3. The petitioner has preferred this application for
grant of regular bail in connection with Tatarpur P.S. Case No.
26 of 2023 dated 19.01.2023 registered for the offences u/s 188
of the Indian Penal Code and sections 8, 18, 20, 22(C) and 23 of
the NDPS Acts.

4. As per the prosecution case, total 420 litres of
codeine cough syrup containing in 4200 bottles was recovered
from the rented room of the petitioner and the co-accused Pappu



Sonar @ Amit Kumar was present in the room and they were apprehended who disclosed that the said contraband was purchased from a TCI Fight Godam situated at Ganji Mil Phaze-2, Tilakmanjhi and the said Godam was being run by the co-accused Gaurav Keshan and on raid total 24,050 bottles of Codeine each of 100ml., 39,600 Nytrazepam Tablets of 10mg., 35,200 Tapentadol Eudol tablets containing opium of 10mg., and 88,400 tablets of Tapentadol Taymol containing opium (total- 1,63,200 tablets), two mobile phones and other documents were recovered. It is further alleged that at the instance of the petitioner and the co-accused person total 600 litres of Codeine syrup and two mobile phones were also recovered from Aggrawal Godam situated at Dixon Road Mundichak and the manager of the said godam namely, Mukesh Kumar was apprehended and he said that the said Godam was run by one Kumar Gaurav.

5. Learned counsel for the petitioner has submitted that the petitioners is innocent and has falsely been implicated in this case. The petitioner has no concern with the seized narcotic drugs and psychotropic substance. Similarly situated co-accused has already been granted bail by the co-ordinate bench of this court vide order dated 05.07.2023 passed in Cr. Misc. No.



30815 of 2023. The petitioner has four other criminal cases of different nature and he is on bail in all the cases as stated in para 3 of the bail petition. The petitioner is in custody since 18.01.2023.

6. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that the petitioner is involved in illegal business of prohibited narcotics drug or psychotropic substance and 4200 bottles of Codeine cough syrup i.e. 420 litres was recovered from the rented house of the petitioner. The petitioner has been in custody for more than six months. It is not a prolonged incarceration. Learned APP has further submitted that Similarly situated co-accused has already been granted bail by the co-ordinate bench of this court *vide* order dated 05.07.2023 passed in Cr. Misc. No. 30815 of 2023 holding that the said contraband is less than commercial quantity. Learned APP for the State has further submitted that the seized contraband is of commercial quantity. Learned APP for the State has also placed reliance on the judgement 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 "weight of entire materials/mixture along with neutral material is to be considered for ascertainment



of whether the quantity is “small quantity” or “commercial quantity”.

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.

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.”

Considering the aforesaid facts and circumstances of the case as well as the recovery of the commercial quantity from



the conscious possession of the petitioner, I am not inclined to
enlarge the petitioner on bail.

The application stands rejected.

(Chandra Prakash Singh, J)

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