

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67177 of 2022

Arising Out of PS. Case No.-382 Year-2022 Thana- KUCHAIKOTE District- Gopalganj

Syam Ali S/O Khurshid Ali Resident of Village- Sueya Pur, P.S.- Kaliya
Chauk, District- Malda (west bengal).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sushil Kumar, Advocate

For the Opposite Party/s : Mr. Dinesh Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

2 24-02-2023 Heard learned counsel appearing on behalf of the
petitioner and learned counsel appearing on behalf of the State.

Let the defect(s), if any, be removed within a period
of four weeks from today.

The petitioner seeks bail in connection with
Kuchaikote P.S. Case No. 382 of 2022 registered for the offence
under Sections 27(b)(ii), 27(d) and 28 of the Drug and
Cosmetics Act, 2008 and under Section 22 of the N.D.P.S. Act.

The accused/petitioner is named in the F.I.R. and is in
custody since 03.09.2022.

The allegation against the petitioner is to have in
possession of 455 bottle of Phensedyl Cough Linctus Syrup,
which is under prohibited schedule list of N.D.P.S. Act.

Learned counsel appearing on behalf of the petitioner



submitted that the petitioner is a driver of alleged vehicle from where recovery of alleged cough syrup was made. It is further submitted that nothing surfaced during the course of investigation, which may suggest that petitioner, being driver, was under knowledge to carry the consignment of such a drug, which is prohibited under N.D.P.S. Act. It is also submitted that alleged cough syrup is manufactured by reputed pharmaceutical companies, where petitioner has no role as per manufacturing process are concerned. It is submitted that if the prohibited compositions of cough syrup be taken into consideration, it would not be more than commercial quantity and, as such, the barrier of Section 37 of the N.D.P.S. Act is not appears applicable in present case. It is also submitted that admittedly, the allegation is covered under Drug and Cosmetics Act, 1940, where necessary a complaint is to be lodged, not the F.I.R. While concluding the argument, it has been submitted that investigation of this case has been completed, for which, charge-sheet has been submitted, as such, there is no chance of tampering with the evidence.

Learned APP, while opposing the prayer of bail, fairly conceded that petitioner is a driver.

Considering the facts and circumstances as mentioned



above, as petitioner is a driver, where nothing surfaced during the course of investigation, which may suggest that petitioner was under knowledge to carry the restricted schedule drugs under N.D.P.S. Act coupled with the fact that charge-sheet has already been submitted, let the petitioner, above named, is directed to be released on bail in connection with Kuchaikote P.S. Case No. 382 of 2022 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Judge, Gopalganj/concerned court, subject to the conditions as mentioned under Section 437 (3) of the Cr.P.C.

(Chandra Shekhar Jha, J)

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