

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13513 of 2024

Arising Out of PS. Case No.-236 Year-2023 Thana- KHARIK District- Bhagalpur

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Rajesh Kumar Yadav @ Rajesh Yadav (Male), aged about 31 years Son of
Patbari Yadav, resident of Village- Lattipur, Police Station- Bihpur, District -
Bhagalpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mr. Arun Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 16-04-2024 Heard Mr. Praveen Kumar, learned counsel
appearing on behalf of the petitioner and Mr. Arun Kumar,
learned APP for the State.

2. The petitioner seeks pre-arrest bail in connection
with Kharik P.S. Case No. 236 of 2023, registered for the
offence punishable under Sections 30(a) of the Bihar Prohibition
and Excise Act as amended up-to-date.

3. As per the allegation made in the FIR, 15 bottles of
Codeine Cough Syrup each containing 100 ml. were recovered,
which were bought from the shop of the petitioner.

4. Learned counsel appearing on behalf of the
petitioner submitted that petitioner is innocent and has falsely



been implicated in the present case. Nothing was recovered from the conscious possession of the petitioner. Name of the petitioner has surfaced on the basis of confessional statement of co-accused in police custody, which has no evidentiary value in the eye of law. Petitioner has clean antecedent. On these grounds, petitioner seeks to be released on pre-arrest bail.

5. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail.

6. Considering the nature of allegation made in the FIR, which has been lodged by the police official, who is not authorized. As per the provision of Section 32 of the Drugs and Cosmetics Act, the police officer was required to complain before the Drug Inspector and the Drug Inspector in accordance with the provision of Drugs and Cosmetics Act, is required to verify, as to whether, the alleged drug, which has been seized unauthorisedly without jurisdiction by the police officer, contains codeine, which was bought from the shop of the petitioner. The quantity of codeine has also not been determined and the petitioner was admittedly not present at the time of alleged recovery and taking into consideration the law laid down by the Apex Court in case of *Union of India Vs. Ashok Kumar Sharma & Ors. reported in 2020 SCC Online SC 683*



and Full Bench of this Court in case of ***Bablu @ Rajesh Kumar vs. the State of Bihar in Cr.W.J.C. No. 887 of 2013***. The FIR lodged against the petitioner is not maintainable as the search and seizure or prosecution cannot be initiated by police official in accordance with the provision of Drugs and Cosmetics Act, 1940 and it can only have been lodged by way of complaint by the Drug Inspector. The police official has no power to register FIR for offences punishable under Chapter III and Chapter IV(A) of the Drugs and Cosmetics Act, 1940 and the law in this regard is well settled by the Full Bench of this Court in ***Bablu @ Rajesh Kumar Vs State of Bihar (supra)***.

7. The petitioner, above named, is directed to be released on pre-arrest bail, in the event of his/her arrest or surrender before the Court below within a period of four weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge IX, Bhagalpur, in connection with Kharik P.S. Case No. 236 of 2023, subject to the condition as laid down under Section 438(2) of the Cr.P.C.

8. The Court below is directed to verify the criminal antecedent of the petitioner as stated in paragraph no. 3 of the bail application. If any other case is pending



**against the petitioner as what has been stated in paragraph
no. 3, this order will lose its force automatically.**

(Purnendu Singh, J)

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