

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16831 of 2024

Arising Out of PS. Case No.-258 Year-2023 Thana- JOGBANI District- Araria

Razia Khatoon, Female, aged about 34 years, Wife of Md. Jiyal Ansari @
Ziyaul Rahman, Resident of Village- Tikuliya Basti, Jogbani, Ward No. 03,
P.O. and P.S.- Jogbani, District- Araria, Bihar

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Vijay Anand, Advocate

For the Opposite Party : Mr. Pawan Kumar Chaurasia, A.P.P.

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

ORAL ORDER

3 31-07-2024 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner seeks bail in connection with Jogbani
P.S. Case No. 258 of 2023 dated 19.10.2023 registered for the
offences punishable under Sections 17, 21 and 22 of the
N.D.P.S. Act.

3. As per the prosecution case, on 19.10.2023, the
petitioner was apprehended by police who was sitting on a
rickshaw and from her possession, Eskuf Cough Syrup (codeine
Phosphate & Triprolidine Hydrochloride Syrup)-6500 ml.,
Nitratvet-89400 Mg., Nitrosun-9500 Mg., Spasmo-Proxyvon
Plus-37,88,400 Mg., Pheniramine Maleate Injection I.P.(Avil)-
980 ml, Buprenorphine Injection I.P. (Lupigesic)-940 ml,



Promethazine Hydrochloride Injection I.P. (Phenergan)-950 ml and Diazepam Injection I.P. 980 ml. were recovered.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. It is submitted that the charge sheet has been submitted in the present case against the petitioner. It is further submitted that the alleged contraband has not been recovered from the conscious possession of the petitioner and the petitioner has no concern with the alleged offence. It is submitted that the seizure list was not prepared at the place of occurrence which shows that the petitioner has been falsely implicated in the present case. It is further submitted that neither the rickshaw was recovered nor the rickshaw-puller was made an accused in the present case. The petitioner is a lady and she took the rickshaw for her residence and she was not aware about the seized contraband kept on the rickshaw. There is no compliance of Section 50 of the N.D.P.S. Act. The petitioner is a working woman having one daughter and she is working hard for livelihood for her family and she has no malafide intention to involve in the aforesaid activity. It has further been submitted by learned counsel for the petitioner that the cognizance has been taken in the present case without any F.S.L. report and till



today no F.S.L. report has come about the seized contraband. The petitioner has clean antecedent as stated in paragraph no. 3 of the bail petition. She is in custody in this case since 20.10.2023.

5. Learned APP for the State has vehemently opposed the bail petition of the petitioner. The seized contraband is commercial quantity of different articles containing Codeine. It is further submitted that the petitioner was found in bulk possession of the manufactured drugs without any valid authorization. It is further submitted that this case comes under the N.D.P.S. Act and the Drugs and Cosmetics Act as per Section 80 of the N.D.P.S. Act. Learned A.P.P. for the State has placed reliance on the judgment in the case of *State of Punjab Vs. Rakesh Kumar* reported in *2018 Supreme Court SCC 466*. Learned A.P.P. for the State has further placed reliance on the judgment 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 in which it has been 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". It is further submitted that codeine is mentioned in the Entry No. 28 of the N.D.P.S. Act. Methyle



Morphine is commonly known as codeine. The act of the petitioner amounts to clear violation of Section 8 of the N.D.P.S. Act as it clearly prohibits possession of narcotic substance except medical and scientific purposes.

6. 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.

7. 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.” It is also



submitted that non-filing of the F.S.L. report with the charge-sheet would not entitle the accused to grant of bail. In the case of *Krishan Lal Vs. State*, reported in *1989 SCC Online Del*, The Hon’ble Apex Court has held that it is not mandatory to file the F.S.L. report alongwith the charge-sheet.”

8. Considering the aforesaid facts and circumstances of the case as well as the recovery of commercial quantity from the possession of the petitioner, this Court is not inclined to grant bail to the petitioner and the same is rejected in connection with Jogbani P.S. Case No. 258 of 2023, pending in the court of learned Special Judge, Araria.

9. The application stands rejected.

(Chandra Prakash Singh, J)

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