

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17289 of 2024

Arising Out of PS. Case No.-111 Year-2023 Thana- KUNALI District- Supaul

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Avinash Kumar, aged about 32 years, Male, son of Ashok Kumar @ Ashok Kumar Kamat, R/O Village- Kunauli, Ward No-12, P.S.- Kunauli, Dist- Supaul.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner : Mr. Md Harun Quareshi, Advocate
For the Opposite Party : Mr. Nand Kishore Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

5 16-07-2024 Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. The petitioner seeks bail in connection with Kanhauli P.S. Case No. 111 of 2023 dated 04.10.2023 registered for the offences punishable under Sections 21(c) and 22 (c) of the N.D.P. S. Act.

3. As per the prosecution case, on 03.10.2023 at about 6.30 P.M., police apprehended Avinash Kumar (petitioner) and the co-accused Tinku Lal Sah and on search, Dialex-DC-15 Nos., Wincerex-T 30 Nos. and Onrex-83 Nos. alongwith a bycycle and two mobile phones were recovered from their



possession.

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 nothing has been recovered from the conscious possession of the petitioner. The petitioner has one criminal antecedent which is not of similar nature as stated in paragraph no. 3 of the bail petition. The petitioner is in custody in this case since 04.10.2023.

5. Learned APP for the State has vehemently opposed the bail petition of the petitioner. As per the F.S.L. report, Codeine was found in the aforesaid seized contraband and the petitioner had no valid authorization for keeping the aforesaid contraband. Learned counsel for the petitioner has 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".

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.”

6. Considering the aforesaid facts and circumstances of the case and the finding substance in the learned A.P.P. for the State, this Court is not inclined to grant bail to the petitioner and the same is rejected in connection with Kanauli P.S. Case No.



111 of 2023, pending in the court of learned Sessions Judge,
Supaul.

7. The application of the petitioner stands rejected.

8. Learned court below is directed to conclude the
trial of the petitioner at the earliest.

(Chandra Prakash Singh, J)

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