

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18873 of 2024

Arising Out of PS. Case No.-1147 Year-2023 Thana- AGAMKUAN District- Patna

Mohammad Bablu @ Md. Bablu @ Bablu Aged about 40 years, Male Son of
Md. Rehad R/o Village- Rupouli, P.S.- Raniganj, Dist.- Araria

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ramesh Kumar Singh, Advocate

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

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL ORDER

2 21-03-2024 Heard both parties.

2. The petitioner seeks bail in connection with
Agamkuan P.S. Case No. 1147 of 2023 registered for the
offences under Sections 21/22 of NDPS Act, 1985.

3. As per the prosecution case, informant
reached the spot on receiving the secret information that a
Scorpio bearing registration no. BR01-AP-7580 laden with large
cough syrup bottles been intercepted. Informant along with
other police personnel searched the vehicle and apprehended
two persons who discloses their name as Shahzad and Babblu
with 2553 bottles of Eskut Cough syrup (Codeine Phosphate
Triprolidine Hydrochloride Syrup) containing 100 ml in each
bottles i.e., total quantity 255.300 Ltrs. from the vehicle.



4. The learned counsel for the petitioner states that nothing has been recovered with the possession of the petitioner and the petitioner has falsely been implicated in the present case. The petitioner had no knowledge that co-accused was travelling with the alleged cough syrup and there is no allegation that he is involved in the alleged crime.

5. Learned counsel for the petitioner further contended that only psychotropic substance contained in the contraband is required to be taken into consideration while determining quantity of prohibited drug i.e., Codeine Phosphate and not the whole of the mixture contained in the cough syrup. He further submitted that there is no independent witness in support of the prosecution case.

6. Learned counsel for the APP have vehemently opposes the instant bail petition and submitted that the judgement of *Hira Singh vs UOI SCC OnLine SC 382* in which Supreme Court has stated that neutral substance is required to be considered while determining small quantity or commercial quantity and hence the prayer of bail shall be rejected.

7. Learned APP has further submitted that there is direct recovery of 2553 bottles of Codeine Syrup carrying 100



ml each i.e., 255.300Ltrs. which is more than commercial quantity under NDPS Act and petitioner does not deserve bail.

8. In ***Hira Singh (supra)***, the three Judge Bench of the Hon'ble Supreme Court had held thus:-

“In case of seizure of mixture of Narcotic Drugs or Psychotropic substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the “small or commercial quantity of Narcotic Drugs or Psychotropic Substances.””

9. The Hon'ble Supreme Court in **Intelligence Officer, Thiruvananthapuram vs. Naushad K.K. & Ors. (2022 Livelaw (SC)978) Cr. App. No. 1726 of 2019** reiterated that neutral substance quantity cannot be ignored while labelling the quantity of contraband recovered on 'small quantity' or 'commercial quantity'.

*“There is no cavil to the issue that the judicial pronouncement now settles the issue in “**Hira Singh & Anr. vs. Union of India & Anr.**” reported as 2020 SCC online SC 382 opining that the decision of this Court relied upon in impugned order “**E. Micheal Raj vs.***



Intelligence Officer, Narcotic Control Bureau (2008) 5 SCC 161” is no more good law and in determining as to what is the quantity, the neutral substance quantity is not be ignored”.

10. In view of the gravity of the consequences of drug trafficking, the offences under the NDPS Act have been made cognizable and non-bailable. To prevent the devastating impact on the people of nation, parliament in its wisdom deemed it fit to introduce stringent conditions for grant of bail under the Act.

11. On perusal of FIR, impugned order dated 18.01.2024 and from seizure list, it appears that police arrested the petitioner on the spot with the banned cough syrup i.e., 255.300 Ltrs. from vehicle bearing registration no. BR01-AP-7580 and as per entry 28 of the NDPS list, small quantity of Codeine is defined as 10g and commercial quantity of Codeine as 1Kg. Considering the facts and circumstances and submissions made on behalf of the petitioner, the quantity of Codeine seized from the petitioner comes under the commercial quantity being 255.300 Ltrs. (2553×100ml) cough syrup which is much more than commercial quantity for Codeine (mention in Sr. No. 28 of the Table), as the quantity seized shall apply to the



entire mixture or solution, I am not inclined to grant bail to the petitioner.

12. Accordingly, the prayer for bail of the petitioner is hereby rejected.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

U		T	
---	--	---	--

