

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15755 of 2024

Arising Out of PS. Case No.-1232 Year-2023 Thana- MADHEPURA District- Madhepura

Krishna Kumar @ Krishn Kumar S/o Bechan Sah R/o Vill - Sahugarh,
Diwani Tola, Ward No. 15, P.S. - Madhepura, Dist. - Madhepura

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Ms. Gulnar Begum, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL ORDER

4 25-04-2024 Heard learned counsel for the petitioner and learned APP
for the State.

2. The petitioner seeks regular bail in connection with Madhepura P.S. Case No. 1232 of 2023, registered for the offence punishable under Section 21 (c) of the NDPS Act and under Section 30 (a) of Bihar Prohibition and Excise Amendment Act, 2018.

3. As per prosecution case, on 19.12.2023 informant got secret information that one Binod Yadav along with his son Karan Kumar @ Raja and his associate were hiding Corex Syrup in straw (Puwal) at Sahugadh tola. On such information informant raided the spot and saw three persons trying to flee away at the door. One person was apprehended and on being search at the door 575 bottles each containing 100ml codeine syrup in total 57.5 Litre Codeine cough Syrup was seized from



the spot.

4. Learned counsel for the petitioner has submits that petitioner is innocent committed no offence and has falsely been implicated in this case. He further submits that petitioner has no criminal antecedent. He further submits that nothing illegal cough syrup was seized from the possession of the petitioner or from house of the petitioner. 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 submits that there is no independent witness to support the prosecution case and petitioner has no concern with the alleged seized article nor he is beneficiary, hence prayed for release of the applicant on bail.

5. Learned APP vehemently opposed the instant bail petition. He further submitted that the total recovery is more than commercial quantity under the NDPS Act and the State Government vide circular no. 11/Adhi. Karya. – 01-06/2016/4027 published in Bihar Gazette dated 19.10.2016 notified all the medicines or medicinal preparation containing the Codeine and Dextropropoxyphene medicinal ingredients to



be intoxicants for the purpose of aforesaid act.

6. To determine as to whether the petitioner was in actual possession of commercial quantity of Codeine, it is relevant to refer to the notification specifying small and commercial quantity for the purpose of the Act S.O. 1055 (E) dated 19th October, 2001 published in Gazette of India, Extra Part-II, Section 3 (ii) dated 19th October, 2001, as amended on 18.11.2009. As per entry 28 of the list, small quantity of Codeine is defined as 10 gram and a commercial quantity of Codeine is defined as 1kg.

7. The scheme of NDPS Act provides graded sentences for possession of small, intermediate and commercial quantities of narcotic drugs or psychotropic substances. Therefore, the penalties or the sentencing has a direct nexus with the amount of contraband psychotropic substance.

8. The judgment of Hira Singh vs. Union of India (AIR 2020 SC 3255) squarely covers the issue and the Hon'ble Supreme Court held that total weight of the manufactured drug or preparation including the neutral material is required to be considered while determining small quantity or commercial quantity.

9. 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.”

10. The Hon'ble S.C. in the order dated 17.11.2022 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 labeling 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”.



11. 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. Since the crime is an act against the society, the legislature has contemplated that public prosecutor must be given an opportunity to oppose the bail application under the Act. Additionally, under Section 37 (b) (ii) of the NDPS Act, the Court is not required to be satisfied about the dual conditions i.e. prima facie opinion of the innocence of the accused and that the accused will not commit a similar offence while on bail, but the court must have “reasonable grounds” for such satisfaction. The standard of satisfaction in such cases is more than satisfaction on a prima facie opinion.

12. The accused at this stage cannot be presumed to be ‘not guilty’ of the offence that he is charged with. Since this court is not satisfied on this ground, there is no question to consider that the accused will not commit the offence while on bail.

13. On perusal of FIR, seizure list, FSL report as well as case diary and impugned order dated 25.01.2024, it appears that



the quantity of Codeine seized from the petitioner comes under the commercial quantity being 57.5 litres (575 x100ml) 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 and there are no reasonable grounds to presume that petitioner is not guilty of offence, accordingly, this is not a fit case where the petitioner to be granted bail.

14. Accordingly, the prayer for bail of the abovenamed petitioner is rejected.

15. However, the learned trial Court is directed to conclude the trial as early as possible.

(Ramesh Chand Malviya, J)

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