

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19298 of 2024

Arising Out of PS. Case No.-24 Year-2024 Thana- KISHANGANJ District- Kishanganj

Ashok Saha son of Gokul Chandra Saha @ Gokul Saha R/o- Solvara Ps-
Gwalapokhar Dist- Uttar Dinazpur w.B

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Praveen Kumar Agrawal, Adv

For the Opposite Party/s : Mr. Mritunjay Kumar Nirala, APP

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

ORAL ORDER

6 10-09-2024 Heard learned counsel for the petitioner and learned
A.P.P for the State.

2. The petitioner has preferred this application for grant of regular bail in connection with Kishanganj P.S. Case No. 24 of 2024 dated 16.01.2024 registered for the offences punishable u/s 30(a), 41 and 47 of the Bihar Prohibition Excise Act.

3. As per the prosecution case, total 150 (1500 bottles of each 100 ml) litres of Triprolidine Hydrochloride and Codeine Phosphate Cough Syrup was recovered from the Car.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The petitioner has no concern with the alleged



recovery. The prosecution has been launched against the petitioner under section 30(a) of the Bihar Prohibition and Excise Act not the N.D.P.S. Act. The petitioner is not the owner of the said seized vehicle but the same was being driven by him at the time of the alleged recovery. Nothing has been recovered from the conscious possession of the petitioner. The petitioner has clean criminal antecedent as stated in para 3 of the bail petition. The petitioner is in custody since 17.01.2024.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that the petitioner is the driver of the said seized vehicle at the time of the alleged recovery and the quantum of the said recovery of Triprolidine Hydrochloride and Codeine Phosphate Cough Syrup is commercial quantity. The said Codeine syrup was found in possession of the petitioner. The petitioner had no valid authorization for keeping the same. 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 APP for the State 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 is 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. 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.”

8. Considering the aforesaid facts and circumstances of the case as well as the recovery of commercial quantity from the conscious possession of the petitioner, this Court is not inclined to grant bail to the petitioner and the same is rejected in connection with Kishanganj P.S. Case No. 24 of 2024, pending in the Court of learned Additional District Judge-II-cum, Special Judge (Excise-1), Kishanganj.

9. The application stands rejected.

(Chandra Prakash Singh, J)

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