

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20218 of 2024

Arising Out of PS. Case No.-225 Year-2023 Thana- BAISI District- Purnia

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Rang Rajan Son Of Amar Nath @ Amar Nath Singh R/O-Tilora, P.S.-
Wazirganj, Distt.-Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mr. Madhuri Lata, APP

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

ORAL ORDER

3 22-05-2024 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner apprehends his arrest in connection with Baisi P.S. Case No. 225 of 2023, registered for the offence punishable under Section 274, 275, 276/34 of I.P.C and under Section 8, 20(b)(ii)(c), 25, 29 of the NDPS Act.

3. As per prosecution case, on 04.06.2023 informant got secret information that banned codeine syrup is being smuggled to Baisi Market by pick-up vehicle from Patna. Informant along with other police personnel after verification raided the place of occurrence, searched the pick-up vehicle bearing registration no. BR02GC/3288 and apprehended two persons who discloses their name as Husnain Raza and Saurav



Kumar with 2919 bottles of codeine syrup containing 100 ml in each bottle i.e., total quantity 291.9 liters from the vehicle as well as smart mobile with SIMs and two bunches of keys from the possession of the co-accused Hasnain.

4. Learned counsel for the petitioner submitted that nothing illegal cough syrup has been seized from the possession of the petitioner and petitioner has no criminal antecedent and is innocent and has been falsely implicated in the present case. 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 to support the prosecution case and petitioner has no concern with the alleged seized article nor he is beneficiary.

5. Learned APP vehemently opposed the instant bail petition and submitted that the petitioner is indulged in illegal business of drug trafficking. He further submitted that there is direct recovery of 2919 bottles of Codeine Syrup carrying 100ml each i.e., 291.9Ltrs. which 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 “small or commercial quantity of Narcotic Drugs or Psychotropic Substances.” 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 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”.

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, as well as case diary and impugned order dated 25.07.2023, it appears that the quantity of Codeine seized from vehicle bearing Registration no. BR-02GC-3288 comes under the commercial quantity being 291.9 litres (2919 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 anticipatory bail.

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

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

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