

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39667 of 2024

Arising Out of PS. Case No.-440 Year-2023 Thana- JOKIHAT District- Araria

Rashid Son of Bijjal @ Waris Resident of Village - Bhagwanpur, ward no 1,
P.S.- Jokihat, Distt- Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar Singh, Adv

For the Opposite Party/s : Mr. Sanjay Kumar Sharma, APP

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

ORAL ORDER

3 18-07-2024 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 Jokihat P.S. Case No. 440 of 2023 dated 17.09.2023 registered for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 300 bottles of *Escuf Codeine* syrup was recovered from the two sacks tied with the two motorcycles which were driven by the petitioner and the co-accused who fled away after parking the said motorcycle in the courtyard of the house of the petitioner.

4. Learned counsel for the petitioner has submitted



that the petitioner is innocent and has falsely been implicated in this case. 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. Nothing has been recovered from the conscious possession of the petitioner. The petitioner has two criminal antecedents as stated in para 3 of the bail petition. The petitioner is in custody since 04.02.2024.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that the seized contraband is commercial quantity i.e. 300 bottles of *Escuf Codeine* syrup. It is further submitted that the petitioner was found in bulk possession of the manufactured drugs without any valid authorization codeine. 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 **State of Punjab Vs. Rakesh Kumar reported in 2018 Supreme Court SCC 466**. Learned APP for the State has further 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 has 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. Methyle Morphine is commonly known as codeine. 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 finding substance in the contention of learned counsel for the State, I am not inclined to enlarge the petitioner on bail.

9. Learned trial court is directed to expedite the trial and conclude the same at the earliest.

(Chandra Prakash Singh, J)

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