

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42213 of 2024

Arising Out of PS. Case No.-107 Year-2024 Thana- KUCHAIKOTE District- Gopalganj

Anil Sharma, aged about 30 years, Male, S/o Gyan Prakash Sharma, R/o vill -
Manhanapura Bhuwan, P.S. - Tarabganj, Distt. - Gonda, U.P.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Pritish Ranjan, Advocate
For the Opposite Party : Mr. Dilip Kumar No. 1, A.P.P.

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

ORAL ORDER

3 02-07-2024 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner seeks bail in connection with Kuchaikote P.S. Case No. 107 of 2024 dated 11.03.2024 registered for the offences punishable under Sections 27(b)(ii), 27(d) and 28 of the Drugs and Cosmetics Act, 2008 and Section 22 of the N.D.P.S. Act, 1985.

3. As per the prosecution case, on 11.03.2024 at about 7.30 hours, in course of checking of vehicle, when a pick-up van bearing Registration No. DL-1-LAL-3024 was stopped, the driver of the vehicle alighted from the pick-up van and tried to flee away but the police caught him. On interrogation, he disclosed his identity as the petitioner and stated that the cough



syrup is loaded on the pick-up van. The police brought the petitioner and the pick-up van to Kuchaikote police station and called the Drug Inspector, Gopalganj, for verification and during course of search, 2500 pieces of bottle of Phensedyl cough syrup each containing 100 ml, total 250 litres kept in 13 cartoons loaded on the pick up van was recovered and seized in presence of the witnesses and the petitioner was arrested.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. It is submitted that no incriminating article has been recovered from the conscious possession of the petitioner rather the alleged Phensedyl cough syrup was recovered from the pick-up van and the petitioner is the driver of the said pick-up van. The petitioner being the illiterate driver of the van in question does not have any knowledge of procedure about carrying of the cough syrup that it was restricted medicine. The owner of the said van booked the said medicines by '*Maa Bhagwati Distributor*, H/O, Narendra Kumar, Main Road, Awadhipur, Naubatpur, Patna, from '*Arihant Pharmaceuticals*' J51, Krishna Nagar, Delhi, on mobile phone but the owner of the said van has not given any paper of the said seized articles. It is further submitted that at the time of seizure, the provisions of Drugs



and Cosmetics Act as well as N.D.P.S. Act were not followed which is mandatory for seizure. The petitioner has clean antecedent as stated in paragraph no. 3 of the bail petition. He is in custody in this case since 14.03.2024.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that 2500 pieces of bottle of Phensedyl cough syrup containing Codeine each 100 ml, total 250 litres kept in 13 cartoons loaded on the pick up van was recovered and the petitioner was driving the said pick-up van. The petitioner was found in bulk possession of manufactured drugs without valid authorization which amounted to clear violation of Section 8 of the N.D.P.S. Act. Learned A.P.P. for the State has also 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".

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.

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.”

6. Considering the aforesaid facts and circumstances of the case as well as the finding substance in the contention of learned counsel for the State, this Court is not inclined to grant bail to the petitioner and the same is rejected in connection with



Kuchaikote P.S. Case No. 107 of 2024, pending in the court of
learned Sessions Judge, Gopalganj.

7. The learned court below is directed to conclude the
trial of the petitioner at the earliest.

(Chandra Prakash Singh, J)

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