

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45090 of 2024**

Arising Out of PS. Case No.-113 Year-2024 Thana- JOKIHAT District- Araria

Md. Shakil son of Rafique RESIDENT OF HARIYA BARA PS- ARARIA
DISTRICT- ARARIA

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Praveen Kumar Agrawal
For the Opposite Party/s : Mr.Zainul Abedin

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

ORAL ORDER

4 22-11-2024 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner has preferred this application for grant of regular bail in connection with Jokihat Mahalgoan O.P. P.S. Case No. 113 of 2024 dated 24.03.2024 registered for the offences punishable under Sections 21C and 22C of Narcotics Drugs and Psychotropic Substances Act.

3. As per the prosecution case, total 60 litres of codeine phosphate cough syrup was recovered from the Bolero vehicle in which Md. Shakil (the petitioner) and the co-accused Md. Nihal were found sitting and 90 litres of codeine phosphate cough syrup eskuf was recovered from the Maruti Suzuki in which the co- accused Md. Jahangir and Md. Shamsheer were



found sitting and they were apprehended by the police.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The seized contraband is not commercial quantity. Nothing has been recovered from the conscious possession of the petitioner. Learned counsel has further submitted that the petitioner has no concern with alleged recovery. The petitioner is not the owner of the said seized vehicle. The petitioner has three criminal antecedents as stated in para 3 of the bail petition. The petitioner is in custody since 25.03.2024.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner. It is stated that the seized contraband is commercial quantity i.e. 150 litres of codeine rich syrup. It is further stated that the petitioner had no any valid authorization for keeping the said contraband. Learned APP has submitted that the petitioner and the co-accused Md. Nihal were found sitting in the said Bolero car from which 60 litres of codeine cough syrup was recovered and 90 litres of codeine rich syrup was recovered from the Maruti Suzuki Car in which the co- accused Md. Jahangir and Md. Shamsheer were sitting. 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. 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 vs. 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 Jokihat Mahalgoan O.P. P.S. Case No. 113 of 2024, pending in the Court of learned Sessions cum, Special Judge, NDPS Act, Araria.

9. The application stands rejected.

(Chandra Prakash Singh, J)

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