

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47988 of 2024

Arising Out of PS. Case No.-56 Year-2024 Thana- GWALPARA District- Madhepura

1. Ganesh Pasi Son of Late Sukhdeo Pasi R/o Village - Reshna, Ward No.- 3, P.S.- Gwalpara (Arar O.P.), District - Madhepura
2. Guddu Kumar Son of Ganesh Pasi R/o Village - Reshna, Ward No.- 3, P.S.- Gwalpara (Arar O.P.), District - Madhepura

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Raj Kumar

For the Opposite Party/s : Mr.Umanath Mishra

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

3 27-08-2024 Heard learned counsel for the petitioners and learned A.P.P for the State.

2. The petitioners have preferred this application for grant of regular bail in connection with Gwalpara (Arar O.P.) P.S. Case No. 56 of 2024 dated 23.03.2024 registered for the offence/s punishable u/s 30(a) of the Bihar Prohibition and Excise Act and 21(c), 22 of N.D.P.S. Act.

3. As per the prosecution case, on secret information, police recovered 19.2 litres of wiscof syrup from the house of the petitioners.

4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. Nothing has been recovered from the conscious



possession of the petitioners. The petitioners have no concern with the alleged recovery. The petitioners have clean antecedent as stated in para 3 of the bail petition. The petitioners are in custody since 24.03.2024.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioners. The seized contraband was recovered in a huge quantity containing codeine Phosphate. The said contraband is of commercial quantity. It is further submitted that as per entry 28 of the list of NDPS Act, small quantity of codeine as defined is 10 gram and commercial quantity of codeine as defined is 1 kg. The accused at this stage cannot be presumed to be 'not guilty' of the offence that he is charged with. The petitioners were found in possession of the contraband without having valid authorization. Learned APP for the State 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".

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 petitioners, I am not inclined to enlarge the petitioners on bail.

9. The application stands rejected.

(Chandra Prakash Singh, J)

guddukr/-

U		T	
---	--	---	--

