

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48961 of 2024

Arising Out of PS. Case No.-79 Year-2024 Thana- JOGBANI District- Araria

Pradhum Das Son of Bahuran Das Resident of Indranagar, Ward No. 03
(Tikuliya Basti), P.S.- Jogbani, District- Araria.

... .. Petitioner/s

Versus

The State of Bihar bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dheeraj Kumar, Adv.

For the Opposite Party/s : Mr.Md. Matloob Rab, APP

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

ORAL ORDER

2 07-08-2024 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 Jogbani P.S. Case No. 79 of 2024 dated 13.04.2024 registered for the offence/s punishable u/ss 21(a) and 22 of the N.D.P.S. Act.

3. As per the prosecution case, 50 bottles each 100 ml (total 5 litres) codeine rich Eskuf Cough Syrup was recovered from the possession of the petitioner.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioner. Learned counsel has further submitted in para 7 of the bail petitioner is that the alleged recovery is a medicine used



in cough and cold and in each 100 ml bottle only 10 ml codeine substance is to be there and if for the purpose of argument if it is accepted to be true even then it is around 500 gms. codeine substance which is much below the commercial quantity. The petitioner has clean antecedent as stated in para 3 of the bail petition. The petitioner is in custody since 13.04.2024

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner. The seized contraband is commercial quantity i.e. 5 litres of codeine syrup. 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 petitioner had no any valid authorization for keeping the same. 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 material available on the record, I am not inclined to enlarge the petitioner on bail and the same is rejected.

9. The application stands rejected.

(Chandra Prakash Singh, J)

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