

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 60129 of 2024

Arising Out of PS. Case No.-1 Year-2024 Thana- R S P.S. District- Araria

Md. Ehsan @ Ehsan Son Of Late Md. Hefaj Resident Of Village - Hariya
Bara, Ward No. - 08, P.S. - R.S. Araria, District - Araria (BIHAR), Pin -
854311

... .. Petitioner/S

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Nishant Kumar Sinha, Adv
For the Opposite Party/s : Mr. Binod Kumar, APP

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

ORAL ORDER

2 09-09-2024 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 R.S P.S. Case No. 01 of
2024 dated 02.03.2024 registered for the offences punishable u/s
21 and 22 and 23 of the N.D.P.S Act.

3. As per the prosecution case, total 160 litres of
codeine cough syrup was recovered from 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 petitioner has no concern with the alleged recovery rather the recovery has been made from the petitioner's house made of tin and straw which is easily accessible to anyone. From bare perusal of the F.I.R., it transpired that 100 litres of codeine cough syrup was recovered from the house of the petitioner and 60 litres of codeine cough syrup was recovered from the Tempo which was parked near the house of the petitioner. Nothing has been recovered from the conscious possession of the petitioner. The petitioner has clean criminal antecedent as stated in para 3 of the bail petition. The petitioner is in custody since 03.03.2024.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that the quantum of the recovery of cough syrup is commercial quantity. Total 60 litres of codeine cough syrup was also recovered from the tempo parked at the door of the petitioner. The petitioner had no valid authorization for keeping the said 160 litres of syrup containing codeine. Learned APP for the State has 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 in which it is 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 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 petitioner, this Court is not inclined to grant bail to the petitioner and the same is rejected in connection with R.S P.S. Case No. 01 of 2024, pending in the Court of learned Sessions cum the Special Judge, N.D.P.S. Araria.

9. The application stands rejected.

(Chandra Prakash Singh, J)

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