

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 57402 of 2024

Arising Out of PS. Case No.-22 Year-2024 Thana- BAIRGACHHAI District- Araria

Md. Rakib Son of Late Hasibuddin R/O Vill.- Koshakipur, Ward no. 05, P.s.-
Bairgachhi, Dist.- Araria.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vijay Kishore Bharti

For the Opposite Party/s : Mr. Yogendra Kumar Singh

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 21-08-2024 Heard learned Advocate for the petitioner and learned
Additional Public Prosecutor for the State.

2. This is an application for grant of bail to the petitioner, who is in custody in connection with Bairgachhi P.S. Case No. 22 of 2024, registered for the offences punishable under Sections 21(b), 22, 23 of the NDPS Act.

3. The police on a tip off illegal storage and selling of cough syrup containing codeine raided the house of the petitioner. On noticing the police party, the petitioner tried to flee away, however, he was apprehended by the police. On search, total 57 bottles of codeine syrup each containing 100 ml. was recovered.

4. Learned Advocate for the petitioner contended that the alleged recovery has been made from a joint family house where several family members reside and as such the petitioner



cannot be made sole responsible for the recovery. Referring to the search and seizure, learned Advocate further contended that had the recovery been made from the house of the petitioner, they would have been certainly taken the signature of some of the family members, at least of the petitioner but neither the family members are witnessed to the search and seizure nor copy of the seizure list was handed over to the petitioner. Containing the P.S. Case number in the seizure list clearly suggests that it has not been prepared in the house of the petitioner, rather the same has been prepared in the police station. There has been no compliance of the mandatory provisions of the NDPS Act, moreover, even if the entire codeine contained in cough syrup is weighed for the purposes of NDPS Act, the same is below the commercial quantity and as such rigors provided under Section 37 of the NDSP Act is not applicable. It is next contended that be that as it may the petitioner is in custody since 07.05.2024 and now the investigation of the crime is complete and the charge sheet has been submitted, but without any FSL report.

5. On the other hand, learned APP for the State vehemently opposes the bail application and submits that the recovery of huge quantity of cough syrup containing codeine



prima facie suggests the involvement of the petitioner in the present crime, coupled with his one criminal antecedent in the Excise matter. It is also contended that in the case of ***Heera Singh vs Union of India, 2020 SCC Online SC 382***, the Apex Court mandates that in case of seizure of mixture of Narcotic drugs or psychotropic substances with one or more neutral substances, the quantity of neutral substances is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug while determining the small or commercial quantity. In such view of the matter, the recovered cough syrup is more than the commercial quantity.

6. In response to the aforesaid submission, learned Advocate for the petitioner placed reliance upon a notification No. 826 (E) dated 14.11.1985 and S.O. 40 (E) dated 29.01.1993 and contended that Methyl morphine (commonly known as "Codeine") and Ethyl morphine and their salts (including Dionine), all dilutions and preparations except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5% in undivided preparations and which have been established in Therapeutic practice. As per the aforesaid notification if any drug contains



more than 100 milligrams of codeine per dosage unit, and in that drug Codeine is compounded with one or more other ingredients and if in the drug the concentration of Codeine is not more than 2.5% in undivided preparations and the drug has been established in Therapeutic practice, will not be a "Manufactured Drug" and, therefore, it will not be a "Narcotic Drug". The aforesaid notification was duly considered by the Division Bench of the Allahabad High Court in the case of ***Vibhor Rana v. Union of India & Anr.***, copy of which has been placed on record.

7. Regard being had to the submissions made on behalf of the parties and considering the infirmities in the search and seizure, coupled with the fact that even if the weight of the cough syrup is taken into consideration, the same is below the commercial quantity and as such the rigors provided under Section 37 of the NDPS would not be applicable, moreover, the investigation of the crime is complete and the chargesheet has been submitted, let the petitioner, abovenamed, be released on bail on furnishing bail bonds of Rs. 25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Court of Sessions-cum-Special Judge, NDPS Act, Araria in connection with Bairgachhi P.S. Case No.



22 of 2024, subject to the condition that one of the bailors shall be the own/close family members of the petitioner with further conditions which are as follows:-

(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(v) The court below shall verify the criminal antecedent of the petitioner and in case, at any stage, it is found that the petitioner has concealed his criminal antecedent, the court below shall take immediate step for cancelling the bail bond of the petitioner. However, the acceptance of bail bonds, in terms of the above-mentioned order, shall not be delayed for this purpose or in the name of verification.

(Harish Kumar, J)

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