

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55780 of 2024

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

Md. Nihal @ Rocky S/o Md. Rakib R/o vill - Haria Bara, ward no. 12, P.S. -
Araria R.S., Distt. - Araria

... .. Petitioner

Versus

The State of Bihar Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr.Rabindra Kumar Priyadarshi
For the Opposite Party : Mr.Anant Kumar 1

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

ORAL ORDER

3 04-09-2024 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 Jokihat P.S. Case No. 113/2024 dated 24.03.2024 registered for the offence punishable u/s 21(c) and 22(c) of the N.D.P.S. Act.

3. As per the prosecution case, the informant along with her team raided the place of occurrence and she saw a deep grey coloured Baleno car on which two persons were sitting and they were trying to flee away but they were apprehended. They disclosed their names as Mohammad Shakil and Mohammad Nihal. On search, 600 bottles each 100 ml codeine rich syrup were recovered. Further, Rs. 1,00,000/- was recovered from Md.



Shakil and Rs. 30,000/- was recovered from Md. Nihal.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. Learned counsel for the petitioner has submitted that only Rs. 30,000/- was recovered from the possession of the petitioner. The petitioner is not the owner of the said vehicle. No case under the NDPS Act is made out against the petitioner. The petitioner has clean antecedent 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 further submitted that the petitioner was one of the occupants of the said vehicle and was arrested on the spot. The seized contraband is commercial quantity i.e. 60 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 1000 gram. The petitioner had no valid authorization for keeping the said contraband. The accused at this stage cannot be presumed to be 'not guilty' of the offence that he is charged with. Learned APP for the State has 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".

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.

6. 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 been 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.*"

7. 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 P.S. Case No. 113/2024 pending in the court of learned Sessions Judge cum Special Judge, NDPS, Araria.

8. This application stands rejected.

(Chandra Prakash Singh, J)

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