

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58022 of 2024

Arising Out of PS. Case No.-111 Year-2024 Thana- JOGBANI District- Araria

Rajkumar Ram @ Nirmal Ram, aged about 27 years, Male, son of Pradeep Ram Resident of village- Tikuliya Basti Ward No 4,PS -Jogbani, Dist- Araria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. N. A. Shamsi, Advocate
For the Opposite Party/s : Mr Ajit Kumar, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 04-09-2024 Heard Mr. N. A. Shamsi learned counsel appearing on behalf of the petitioner and Mr. Ajit Kumar, learned APP for the State.

2. The petitioner seeks pre-arrest bail in connection with Jogbani P.S. Case No. 111 of 2024 registered for the offence(s) punishable under Sections 21 and 22 of the N.D.P.S. Act.

3. As per the allegation made in the FIR, which has been lodged by the SHO that upon getting a secret information, they raided the house of the petitioner and recovered medication drugs, as mentioned in the seizure list from the courtyard of the petitioner's house.

4. Mr. N. A. Shamsi, learned counsel appearing on behalf of the petitioner submitted that the medicine mentioned



in the seizure list is not covered by the provision of Narcotic Drugs and Psychotropic Substances Act, 1985, as the same are medicines and the same were recovered from the courtyard of the house of the petitioner. The FIR cannot be lodged for alleged violation of Sections 21 and 22 of the NDPS Act. The only action which was required after recovery of the medicines, which are admittedly drugs to have made a complaint before the Drug Inspector of the district. There has been complete violation of the manner in which the seizure has been affected and petitioner, who was not in the house at the time of the alleged seizure, has been made accused in the present case and is faced with the rigors of criminal prosecution. Learned counsel further submitted that otherwise also, nothing was recovered from the possession of the petitioner. Even for the purposes of NDPS Act, the possession of offending substance could be considered an offence punishable under NDPS Act. Secondly, the drugs mentioned in the seizure list is not included in the schedule of the NDPS Act. On these grounds, learned counsel further submitted that the learned District Court without considering the provisions of the NDPS Act and the Drugs and Cosmetic Act and without sending the sample for its analysis has rejected the pre-arrest bail of the petitioner.



5. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail.

6. Having considered the rival submissions made on behalf of the the parties, I find that bail application of the petitioner has been rejected considering the drugs mentioned in the seizure list to be of more than the small quantity considering the law laid down by the Apex Court in case of **Hira Singh and another Versus Union of India and another** reported in (2020) 20 SCC 272, wherein it was held that in case of seizure of mixture of narcotics drugs or psychotropic substance with one or more neutral substances, the quantity of neutral substance is not to be excluded and to be taken into consideration along with the actual content by weight of the offending drug while determining the small or commercial quantity of the narcotics drugs or psychotropic substance. I find that resorting to the provisions of NDPS Act by the police officer in lodging the FIR is uncalled for.

7. The learned District Court is directed to verify from the schedule appended to the NDPS Act, as to whether, the drugs mentioned in the seizure list are notified as narcotics drugs or psychotropic substances by the Central government and if it is found that the drugs as mentioned in



the seizure list don't find any reference in the schedule and any notification of the Central government or it is derivatives of any psychotropic or narcotics substance as per Section 2 of NDPS Act, the petitioner, above named, is directed to be released on pre-arrest bail, in the event of his arrest or surrender before the learned District Court within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Sessions -cum-Spl. Judge, (NDPS Act), Araria in connection with Jogbani P.S. Case No. 111 of 2024, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Purnendu Singh, J)

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