

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61103 of 2024

Arising Out of PS. Case No.-88 Year-2024 Thana- Tilkamanjhi District- Bhagalpur

Manish Kumar Son of Late Hardeo Prasad Yadav R/o Mohalla- Jogshar Upar
Tola Gawal Toli, P.S.- Jogshar, District- Bhagalpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rajive Ranjan Singh
For the Opposite Party/s : Mr. Bhanu Pratap Singh

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

ORAL ORDER

2 05-09-2024 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 Tilkamanjhi P.S. Case No. 88 of 2024 dated 09.06.2024 registered for the offences punishable u/s 21 and 22 of the NDPS Act and 18, 27 of the Drug and Cosmetic Act.

3. As per the prosecution case, total 20 bottles each containing 100 ml of Codeine Phosphate and Tropolidine HCL syrup were recovered from the bag which was kept in the petitioner's car.



4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The said seized car was being driven by the petitioner at the time of the alleged recovery. Nothing has been recovered from the conscious possession of the petitioner. The petitioner has three criminal antecedents as stated in para 3 of the bail petition. The petitioner is in custody since 10.06.2024.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that the quantum of recovery of cough syrup is commercial quantity and the petitioner has no valid authorization for keeping the same. 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 Tilkamanjhi P.S. Case No. 88 of 2024, pending



in the Court of learned District and Sessions Judge, Bhagalpur.

9. The application stands rejected.

(Chandra Prakash Singh, J)

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