

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61759 of 2023

Arising Out of PS. Case No.-225 Year-2023 Thana- BAISI District- Purnia

Saurav Kumar Age About 19 Years S/O Naresh Singh @ Naresh Kumar R/O
Ambedkar Nagar, At Bijay Singh Boring, P.S- Rupaspur, Distt.- Patna, At
Present Residing Of Kalambag Ward No. 03, P.S- Sadar, Distt.- Muzaffarpur.
... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anu Priyadarshni, Advocate

For the Opposite Party/s : Mr.Ram Priya Sharan Singh, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL ORDER

6 15-03-2024

Heard both parties.

2. The petitioner seeks bail in connection with

Baisi P.S. Case No. 225 of 2023 registered for the offences
under Sections 274, 275, 276 / 34 of the Indian Penal Code and
Sections 8, 20(b)(ii)(c), 25, 29 of NDPS Act, 1985.

3. As per the prosecution case, informant

received a secret information that a trip of codeine syrup have
come to Baisi market from Patna. Informant along with other
police personnel after verification raided the place of occurrence,
searched the pick-up vehicle bearing registration no. BR-
02GC/3288 and apprehended two persons who discloses their
name as Husnain Raza and Saurav Kumar with 2919 bottles of
codeine syrup containing 100 ml in each bottles i.e., total
quantity 291.900 Ltrs. from the vehicle as well as smart mobile



with SIMs and two bunches of keys from the possession of the co-accused Hasnain.

4. The learned counsel for the petitioner states that nothing has been recovered with the possession of the petitioner and the petitioner has falsely been implicated in the present case. The petitioner has only brought the aforesaid article from Patna and asked them to keep in the shop and there is no allegation that he is involved in the alleged crime.

5. Learned counsel for the petitioner further contended that only psychotropic substance contained in the contraband is required to be taken into consideration while determining quantity of prohibited drug i.e., Codeine Phosphate and not the whole of the mixture contained in the cough syrup. He further submitted that there is no independent witness in support of the prosecution case.

6. Learned counsel for the APP have vehemently opposes the instant bail petition and submitted that the petitioner is indulged in illegal business of drug trafficking and states that the judgement of *Hira Singh vs UOI SCC OnLine SC 382* in which Supreme Court has stated that neutral substance is required to be considered while determining small quantity or commercial quantity and hence the prayer of bail



shall be rejected.

7. Learned APP has further submitted that there is direct recovery of 2919 bottles of Codeine Syrup carrying 100 ml each i.e., 291.900Ltrs. which is more than commercial quantity under NDPS Act and petitioner does not deserve bail.

8. In ***Hira Singh (supra)***, the three Judge Bench of the Hon'ble Supreme Court had held thus:-

“In case of seizure of mixture of Narcotic Drugs or Psychotropic substances with one or more neutral substance(s), the quantity of neutral substance(s) 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 of Narcotic Drugs or Psychotropic Substances.””

9. The Hon'ble Supreme Court in **Intelligence Officer, Thiruvananthapuram vs. Naushad K.K. & Ors. (2022 Livelaw (SC)978) Cr. App. No. 1726 of 2019** reiterated that neutral substance quantity cannot be ignored while labelling the quantity of contraband recovered on 'small quantity' or 'commercial quantity'.

“There is no cavil to the issue that the judicial pronouncement now settles the issue



in “Hira Singh & Anr. vs. Union of India & Anr.” reported as 2020 SCC online SC 382 opining that the decision of this Court relied upon in impugned order “E. Micheal Raj vs. Intelligence Officer, Narcotic Control Bureau (2008) 5 SCC 161” is no more good law and in determining as to what is the quantity, the neutral substance quantity is not be ignored”.

10. In view of the gravity of the consequences of drug trafficking, the offences under the NDPS Act have been made cognizable and non-bailable. To prevent the devastating impact on the people of nation, parliament in its wisdom deemed it fit to introduce stringent conditions for grant of bail under the Act.

11. On perusal of FIR, impugned order dated 25.07.2023 and from seizure list, it appears that police arrested the petitioner on the spot while they were unloading the banned cough syrup i.e., 291.900 Ltrs. from vehicle bearing registration no. BR-02GC32/3288 and as per entry 28 of the NDPS list, small quantity of Codeine is defined as 10g and commercial quantity of Codeine as One Kg. Considering the facts and circumstances and submissions made on behalf of the petitioner, the quantity of Codeine seized from the petitioner comes under



the commercial quantity being 219.900 Ltrs. (2919×100ml) cough syrup which is much more than commercial quantity for Codeine (mention in Sr. No. 28 of the Table) as the quantity seized shall apply to the entire mixture or solution, I am not inclined to grant bail to the petitioner.

12. Accordingly, the prayer for bail of the petitioner is hereby rejected.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

U		T	
---	--	---	--

