

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62024 of 2023

Arising Out of PS. Case No.-316 Year-2023 Thana- KUCHAIKOTE District- Gopalganj

Rakesh Kumar Yadav, Male, aged about 31 years, Son Of Rampal Yadav
Resident Of Village- Ulrapur, PS- Kakori, Dist- Lucknow , Up

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dwivedy Surendra, Advocate

For the Opposite Party/s : Mr. Satya Nand Shukla, APP

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

ORAL ORDER

8 04-04-2024 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner seeks regular bail in connection with Kuchaikot P.S. Case No. 316 of 2023, registered for the offence punishable under Sections 27 (b)(ii), 27(d) and 28 Drug and Cosmetics Act, 2008 and Section 22 of the NDPS Act.

3. As per prosecution case, on 23.06.2023 during the course of checking vehicle, a truck bearing registration no. UP32-SN-3730 was stopped which was driven by the petitioner and from the possession of the petitioner, 32,000 pieces of Eskuf Cough Syrup each containing 100 ml, black colour of rubber sheet kept in 8 bags and solution (liquid) kept in 6 tin each containing 30 litres were recovered from the said truck. The



total quantity of cough syrup recovered is 320 litres and petitioner could not produce any valid document to carry the said quantity of contraband.

4. Learned counsel for the petitioner has submitted that petitioner is a driver of the said vehicle, having no criminal antecedent and has been falsely implicated in the present case. He has further submitted that from perusal of the provisions of Sections of the Drugs and Cosmetics Act, 2008, it appears that these provisions are applicable on manufacture, seller and distributors and even if the alleged 32,000 bottles of cough syrup recovered from possession of the petitioner, he is only the driver of the said vehicle. 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 has further submitted that there is no independent witness to support the prosecution case and petitioner has no concern with the alleged seized article nor he is beneficiary, hence prayed for release of the petitioner on bail.

5. Learned APP vehemently opposed the instant bail petition. He has further submitted that the total recovery is more



than commercial quantity under the NDPS Act and the State Government vide circular no. 11/Adhi. Karya. – 01-06/2016/4027 published in Bihar Gazette dated 19.10.2016 notified all the medicines or medicinal preparation containing the Codeine and Dextropropoxyphene medicinal ingredients to be intoxicants for the purpose of aforesaid act.

6. To determine as to whether the petitioner was in actual possession of commercial quantity of Codeine, it is relevant to refer to the notification specifying small and commercial quantity for the purpose of the Act S.O. 1055 (E) dated 19th October, 2001 published in Gazette of India, Extra Part-II, Section 3 (ii) dated 19th October, 2001, as amended on 18.11.2009. As per entry 28 of the list, small quantity of Codeine is defined as 10 gram and a commercial quantity of Codeine is defined as 1kg.

7. The scheme of NDPS Act provides graded sentences for possession of small, intermediate and commercial quantities of narcotic drugs or psychotropic substances. Therefore, the penalties or the sentencing has a direct nexus with the amount of contraband psychotropic substance.

8. The judgment of Hira Singh vs. Union of India (AIR 2020 SC 3255) squarely covers the issue and the Hon'ble



Supreme Court held that total weight of the manufactured drug or preparation including the neutral material is required to be considered while determining small quantity or commercial quantity.

9. 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.”

10. The Hon'ble S.C. in the order dated 17.11.2022 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 labeling 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”.

11. 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. Since the crime is an act against the society, the legislature has contemplated that public prosecutor must be given an opportunity to oppose the bail application under the Act. Additionally, under Section 37 (b) (ii) of the NDPS Act, the Court is not required to be satisfied about the dual conditions i.e. prima facie opinion of the innocence of the accused and that the accused will not commit a similar offence while on bail, but the court must have “reasonable grounds” for such satisfaction. The standard of satisfaction in such cases is more than satisfaction on a prima facie opinion.

12. The petitioner at this stage cannot be presumed to be ‘not guilty’ of the offence that he is charged with. Since this Court is not satisfied on this ground, there is no question to consider that the accused will not commit the



offence while on bail.

13. On perusal of FIR, seizure list, drug report as well as case diary and impugned order dated 31.07.2023, it appears that the quantity of Codeine seized from the petitioner comes under the commercial quantity being 320 litres (32,000 x100ml) 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 and there are no reasonable grounds to presume that petitioner is not guilty of an offence, accordingly, this is not a fit case where the petitioner to be granted bail.

14. Accordingly, the prayer for bail of the above-named petitioner is hereby rejected.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

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