

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65317 of 2024

Arising Out of PS. Case No.-124 Year-2024 Thana- Excise P.S. District- Madhepura

Md. Tajauddin S/o Md. Bakrud Resident of village- Resna, ward no 3, PS-
Gwalpara, District- Madhepura

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shahid Aqubal, Adv

For the Opposite Party/s : Md. Anzarul Haque Sahara, APP

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

ORAL ORDER

2 11-09-2024 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 Udakishunganj (Madhepura) Excise P.S. Case No. 124 of 2024 dated 27.06.2024 registered for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 10 litres of illegal **Wiscof Codeine Cough Syrup** was recovered from the house of the petitioner.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The prosecution has been launched against the



petitioner under section 30(a) of the Bihar Prohibition and Excise Act not the N.D.P.S. Act. The petitioner has no concern with the alleged recovery. Nothing has been recovered from the conscious possession of the petitioner. The petitioner has clean criminal antecedents as stated in para 3 of the bail petition. The petitioner is in custody since 28.06.2024.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that the seized contraband is commercial quantity i.e. 10 litres of **Wiscof Codeine Cough Syrup** and the petitioner has no any valid authorization for keeping the same. It is further submitted that this case comes under the N.D.P.S. Act and the Drugs and Cosmetics Act as per section 80 of the N.D.P.S. Act. 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 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". 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 Udakishunganj (Madhepura) Excise P.S. Case No. 124 of 2024/, pending in the Court of learned Additional Sessions Judge- VII-cum-Special Judge Excise-II, Madhepura.

9. The application stands rejected.

(Chandra Prakash Singh, J)

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