

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64724 of 2023

Arising Out of PS. Case No.-1272 Year-2023 Thana- Excise P.S. District- Patna

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Kundan Kumar (Male), aged about 25 years, S/O Ram Babu Chaudhary, R/O Village- Karimchak Balua, P.S- Harnaut, Distt.- Nalanda.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner : Mr. D.K. Sinha, Advocate and Mrs. Soni Kumari,
Advocate
For the Opposite Party : Mr. Ajay Kumar No. 2, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

13 23-07-2024 Heard learned senior counsel for the petitioner and learned A.P.P. for the State.

2. The petitioner seeks bail in connection with Excise Patna P.S. Case No. 1272 of 2023, Special Case No. 6166 of 2023 dated 07.08.2023 registered for the offences punishable under Sections 30(a), 30(f), 32(3) and 56(b) of the Bihar Prohibition and Excise (Amendment) Act, 2022.

3. As per the prosecution case, on 07.08.2023 at about 10.30 P.M., police seized one Truck which was driven by the petitioner and on search, Codeine Phosphate & Triprolidine Hydrochloride Syrup (Wiscop Company)-920 litres, B.No.-



WW123069- 820 litres, Triprolidine Hydrochloride & Codeine Phosphate Syrup (Wisodin Company)-250 litres, Triprolidine Hydrochloride & Codeine Phosphate Syrup (Wiscodin Company)-250 litres, total 2240 litres cough syrup containing codeine were recovered from the said Truck. It is further alleged that when police demanded document for the aforesaid cough syrup from the petitioner he did not produce any document with regard to the same.

4. Learned senior counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. It is submitted that the alleged recovered codeine cough syrup are medicines of cough, the petitioner being the driver, he was told by the transporter that the bottles contained the cough syrup and hence in good faith, he carried the same. A lay man driver cannot decide whether the cough syrup bottles were medicines or liquor. It is further submitted that the petitioner was arrested on 07.08.2023 but he was sent to the court on 09.08.2023 after a lapse of two days of the arrest which act of the informant is violates the mandate of Section 57 of the Cr.P.C. It is further submitted that the two seizure list witnesses are two constables who were the members of the raiding party and hence there is no compliance of Section 100 of



the Cr.P.C. The petitioner has clean antecedent as stated in paragraph no. 3 of the bail petition. The petitioner is in custody in this case since 09.08.2023 although he was arrested on 07.08.2023.

5. Learned APP for the State has vehemently opposed the bail petition of the petitioner. As per the F.S.L. report, Codeine was found in the aforesaid seized contraband and the petitioner had no valid authorization for keeping the aforesaid contraband. The seized contraband is commercial quantity i.e., 2240 litres cough syrup containing Codeine. It is further submitted that the petitioner was found in bulk possession of the manufactured drugs without any valid authorization. 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 A.P.P. for the State has placed reliance on the judgment in the case of *State of Punjab Vs. Rakesh Kumar* reported in *2018 Supreme Court SCC 466*. Learned A.P.P. for the State has further 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 has been 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. Methyle Morphine is commonly known as codeine. 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 and the finding substance in the learned A.P.P. for the State, this Court is not inclined to grant bail to the petitioner and the same is rejected in connection with Excise Patna P.S. Case No. 1272 of 2023, Special Case No. 6166 of 2023, pending in the court of learned Special Judge, Excise, Patna.

9. The application of the petitioner stands rejected.

10. Learned court below is directed to conclude the trial at the earliest.

(Chandra Prakash Singh, J)

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