

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72567 of 2024

Arising Out of PS. Case No.-111 Year-2023 Thana- KUNAU LI District- Supaul

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Tinku Lal Sah S/O Jay Prakash Sah Resident of Ward No. 06, village -
Kunauli, Police Station - Kunauli, Distt.- Supaul.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Arun .

For the Opposite Party/s : Mrs. Sharda Kumri

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CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 18-10-2024 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 NDPS 52 of 2023 arising out of Kunauli P.S. Case No. 111 of 2023 dated 04.10.2023 registered for the offence/s punishable u/ss 21(C), 22 (C) of the NDPS Act.

3. As per the prosecution case, total 15 bottles of Dialex-DC, 30 bottles of Wincerex-T and 83 bottles of Onerex of codeine cough syrup were recovered from the sacks in possession of the petitioner.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioner. The petitioner has clean antecedent as stated in para 3 of



the bail petition. The petitioner is in custody since 04.10.2023.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner. It is further submitted that total 15 bottles of Dialex-DC containing each of 100 ml. (1.5 litres), 30 bottles of Wincerex-T containing each of 100 ml. (3 litres) and 83 bottles of Onerex containing each of 100 ml. (8.3 litres) of codeine cough syrup were recovered from the conscious possession of the petitioner. The seized contraband is commercial quantity i.e. 12.8 litres of codeine syrup. It is further submitted that as per entry 28 of the list of NDPS Act, small quantity of codeine as defined is 10 gram and commercial quantity of codeine as defined is 1000 gram. The accused at this stage cannot be presumed to be 'not guilty' of the offence that he is charged with. Learned APP for the State also 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". The petitioner had no any valid authorization for keeping the said contraband. The said offence is related to the offence of NDPS Act and Drug and Cosmetic Act.

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 of codeine syrup from the conscious possession of the petitioner, I am not inclined to enlarge the petitioner on bail.

(Chandra Prakash Singh, J)

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