

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75462 of 2024

Arising Out of PS. Case No.-203 Year-2023 Thana- BHAPTIAHI District- Supaul

Hareram Thakur S/o Maheshwari Thakur R/o Village-Saraigarh, Ward No.14,
P.S.- Bhaptiyahi, Dst.- Supaul

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rajani Ranjan Pd. Singh, Adv.

For the Opposite Party/s : Mr. Abhay Kumar Roy, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 13-11-2024 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 N.D.P.S. P.S. Case No. 62 of 2023 arising out of Bhaptiyahi P.S. Case No. 203 of 2023 dated 03.12.2023 registered for the offence/s punishable u/s 8/21(b) of N.D.P.S. Act.

3. As per the prosecution case, total 130 bottles of Codeine Phosphate and Triprolidine Hydrochloride Syrup (WISCOF) each containing 100 ml were 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. 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 04.12.2023. Earlier the petitioner has been rejected regular bail by this Court vide order dated 30.04.2024 passed in Cr. Misc. No. 13397 of 2024.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner. The seized contraband is commercial quantity i.e. 13 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. The petitioner had no valid authorization for keeping the said codeine syrup. 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".

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, I am not inclined to enlarge the petitioner on bail.

9. Learned trial court is directed to expedite the trial and conclude the same at the earliest.

(Chandra Prakash Singh, J)

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