

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.81663 of 2023

Arising Out of PS. Case No.-440 Year-2023 Thana- JOKIHAT District- Araria

1. Rashid, aged about 27 years, Gender-Male, S/O Bijjal @ Waris, R/O Village- Bhagwanpur, Ward No. 01, P.S. Jokihat, Dist. Araria.
2. Bijjal @ Waris, aged about 60 years, Gender-Male, S/O Basir, R/O Village- Bhagwanpur, Ward No. 01, P.S. Jokihat, Dist. Araria.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioners : Mr. Syed Md. Najmul Bari, Advocate

For the Opposite Party : Mr. Nagendra Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

3 22-02-2024 A supplementary affidavit has been filed on behalf of the petitioners. Let it be kept on the record.

2. Heard learned counsel for the petitioners and learned A.P.P. for the State.

3. The petitioners are apprehending their arrest in connection with Jokihat P.S. Case No. 440 of 2023 dated 17.09.2023 registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

4. As per the prosecution case, police recovered 30 litres of Eskuf Codeine Phosphate and Triprolidine Hydrochloride Syrup kept in 300 bottles from the two



motorcycles parked at the courtyard of the petitioners.

5. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. It is further submitted that the petitioners are the son and the father and they are very respectable persons of their society but police are adamant to arrest them at any cost and as such has blamed about the commitment of the instant false and frivolous allegation. It is further submitted that the alleged recovery has been made from the motorcycles, hence, Section 30(a) of the Excise Act is made out against the petitioners. The petitioners are vegetable shopkeeper at Bhagwanpur. It is further submitted that the petitioner no. 2 is an old man and he cannot see clearly and the petitioner no. 1 is suffering from several diseases like heart, lungs and kidney. The petitioners have no connection in dealing with the wine and any intoxicated substances and deal in cough syrup, however, police made accused in the present case. It is further submitted that both the independent seizure list witnesses and neighbours of the accused who are eye witnesses have made their statement on affidavit that seized articles as well as both motorcycles



do not belong to the named accused persons as also the said seized articles has not been recovered from the house or from the land of the said named accused persons rather it has been recovered from the bushes on parti land beside the house of the petitioners which does not belong to the petitioners. The passage of the place of occurrence is separate from the house of the petitioners and not of the petitioners as stated in paragraph no. 2 of the supplementary affidavit filed on behalf of the petitioners. The seized contraband is of small quantity. The petitioners have clean antecedent, as stated in paragraph no. 3 of the bail petition.

6. Learned A.P.P. for the State has vehemently opposed the prayer for anticipatory bail of the petitioners by submitting that total 30 liters of Eskuf Codeine Phosphate and Triprolidine Hydrochloride Syrup kept in 300 bottles was recovered from the two motorcycles parked at the courtyard of the petitioners. It is a case of the N.D.P.S. Act.

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.

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. Learned A.P.P. 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 alongwith neutral material is to be considered for ascertainment of whether the quantity is "small quantity" or "commercial quantity". The seized contraband is of commercial quantity.

7. Considering the aforesaid facts and circumstances of the case as well as the recovery of commercial quantity from the conscious possession of the petitioners, I am of the view that no case for grant of anticipatory bail is made out. The petition is rejected and the petitioners are directed to surrender before the learned court below within a period of six weeks from the date of



receipt/production of a copy of this order and the learned court below shall consider the prayer for regular bail of the petitioners without being prejudiced of the order of this Court in connection with Jokihat P.S. Case No. 440 of 2023, pending in the court of learned Special Excise Court No. 2, Araria.

8. Accordingly, the anticipatory bail application of the petitioners stands rejected.

(Chandra Prakash Singh, J)

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