

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6028 of 2024

Arising Out of PS. Case No.-577 Year-2023 Thana- Excise P.S. District- Madhepura

Mukesh Kumar S/O Ramavtar Yadav @ Ramotar Yadav Village- Mathahi, Ps. Madhepura, Dist. Madhepura.

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dinesh Prasad Verma
For the Opposite Party/s : Mr.Sanjay Kumar Pandey

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

4 12-03-2024 Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner is apprehending his arrest in connection with Madhepura Excise P.S Case No. 577 of 2023, dated 12.10.2023, registered for the offences punishable under Section 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 47 litres of illegal wiscof cough syrup (combination of codeine phosphate) was recovered from a vehicle.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The petitioner has one criminal antecedent in which he is on bail as stated in para 3 of the bail petition. The apprehended co-accused namely Mantu Kumar disclosed the



name of the petitioner due to previous enmity. No incriminating article has been recovered from the conscious possession of the petitioner, hence no case is made out against the petitioner. The recovery was made from the car. The petitioner is not the owner of the said car and the same was not being driven by the petitioner at the time of alleged recovery.

5. 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 along with 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.

"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.

6. Considering the aforesaid facts and circumstances of the case and the nature of allegation against the petitioner, let the above named petitioner, in the event of his arrest/surrender within a period of six weeks from today, be enlarged on anticipatory bail on furnishing bail-bond of Rs. 20,000/- (Rupees Twenty thousand) with two sureties of the like amount each to the satisfaction of learned Court concerned, Madhepura in connection with Madhepura Excise P.S Case No. 577 of 2023, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure with the following condition:

(i) The petitioner is directed to remain physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, his bail bonds are liable to be cancelled.

7. This application stands allowed.

(Chandra Prakash Singh, J)

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