

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.2765 of 2025**

Arising Out of PS. Case No.-117 Year-2024 Thana- MAHALGAON District- Araria

Chintu Prasad @ Chintu Kumar, Son of Sri Lakhan Yadav, Resident of village  
- Gosai Math, Sampatchak, P.S.- Sona Gopalpur, District - Patna

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

**Appearance :**

For the Petitioner : Mr. Pratik Mishra, Advocate

For the Opposite Party : Mr. Anish Chandra, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH  
SINGH**

ORAL ORDER

4      07-05-2025              Heard learned counsel for the petitioner and learned  
A.P.P. for the State.

2. The petitioner seeks bail in connection with Mahalgaon P.S. Case No. 117 of 2024 dated 08.10.2024 registered for the offences punishable under Sections 21(b) and 25 of the N.D.P.S. Act.

3. As per the prosecution case, on 08.10.2024 at about 5.30 P.M., during the course of patrolling, police saw that near the firewood house of the co-accused Kiro Biswas, four persons were keeping cartoon in the firewood house after unloading from the Bolero Pick-up vehicle. Police apprehended the petitioner and three persons fled away from the place of occurrence. It is further alleged that police recovered 38



cartoons of Eskuf Cough Syrup containing Codeine (i.e., 570 litres) from the Bolero Pick-up vehicle and 11 cartoons of Eskuf Cough Syrup containing Codeine (i.e., 165 litres) from the firewood house of the co-accused person Kiro Viswas, total 735 litres.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in the present case. The petitioner was not arrested from the Bolero Pick-up vehicle. No incriminating article has been recovered from his possession. It is further submitted that the petitioner is not the owner of the said Bolero Pick-up vehicle and firewood house from where the alleged recovery has been made. It is further submitted that the petitioner was the driver of the vehicle in question and he had no knowledge regarding the contraband loaded on the vehicle in question. There is no statutory compliance under the provisions of the N.D.P.S. Act. It is further submitted that the petitioner had gone to Jokihat, Araria to attend some personal work where he had an altercation with police personnel over some petty issue after which he was picked up and subsequently falsely implicated in the present case. It is further submitted that the entire allegation revolves around recovery of Eskuf Cough Syrup which contains some



minuscule amount of Codeine. The article is basically a cough syrup, a medicine. Possessing medicines without a valid license should attract the provisions of Drugs and Cosmetics Act, and there should be no application of N.D.P.S. Act in such cases. It is further submitted that the petitioner is suffering from Tuberculous Meningitis and his situation is precarious unable to even stand on his legs and he was admitted to J.N.M.C.H., Bhagalpur from jail on 30.10.2024 for treatment in semiconscious state. The petitioner still remains bedridden and he is in dire need of good medical attention and family care. The petitioner has clean antecedent as stated in paragraph no. 3 of the bail application. The petitioner is in custody in this case since 09.10.2024.

5. Learned A.P.P. for the State has vehemently opposed the prayer for bail petition of the petitioner and has further submitted that the seized contraband is commercial quantity i.e., 735 litres of Escuf Cough Syrup containing codeine and the petitioner has no any valid authorization for keeping the same. 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 *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. It is further submitted that the petitioner is the driver of the vehicle from which seized contraband was recovered.

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 finding substance in the contention of the learned A.P.P. for the State as well as the recovery of commercial quantity from the conscious possession of the petitioner, this Court is not inclined to grant bail to the petitioner and the same is rejected in connection with Mahalgaon P.S. Case No. 117 of 2024 pending in the court of learned Special Judge (N.D.P.S. Act), Araria.

9. The application stands rejected.

10. The learned trial court is directed to expedite the trial of the petitioner and conclude the same at the earliest.

**(Chandra Prakash Singh, J)**

U.K./-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

