

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1777 of 2025

Arising Out of PS. Case No.-2050 Year-2024 Thana- Excise P.S. District- Patna

1. Dipak Kumar Son of Dinesh Yadav Resident of Milkiper, Police Station- Ghosi, District- Jehanabad
2. Shambhu Kumar son of Late Sahdeo Paswan village- Aterpura, Ps- Dhanarua, Dist- patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Raj Krishna Jha, Adv.

For the Opposite Party/s : Ms. Sangeeta Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 19-02-2025 Heard learned counsel for the petitioners and learned A.P.P for the State.

2. The petitioners have preferred this application for grant of regular bail in connection with Patna Excise P.S. Case No. 2050 of 2024 dated 29.08.2024 registered for the offences punishable u/ss 30(a)(f), 32(1)(2)(3), 41(1)(2) and 56(b) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 2800 litres of codeine cough syrup was recovered from the godown and the motorcycle.

4. 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 staff of the godown and they were doing their duty and



except this they have no concern with the alleged recovery. Learned counsel has further submitted that the petitioner no. 1 is a care taker of the said godown and the petitioner no. 2 is the employee of the said godown. Nothing has been recovered from the conscious possession of the petitioners. The petitioners have clean antecedent as stated in para 3 of the bail petition. The petitioners are in custody since 04.05.2024.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioners and submitted that both the petitioners were found in the said godown where the recovery was made. The seized contraband is commercial quantity i.e. 2,800 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 petitioners 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 petitioners, I am not inclined to enlarge the petitioners on bail.

9. The application stands rejected.

(Chandra Prakash Singh, J)

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