

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20660 of 2025

Arising Out of PS. Case No.-418 Year-2024 Thana- ATHMALGOLA District- Patna

MD. SALAM S/o Mohammad Safrudeen @ Md. Safruddin @ Md. Sarfuddin
R/o Village- Gangjala, Saharsa, P.S.- Saharsa Sadar, District- Saharsa

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Neeraj Kumar
For the Opposite Party/s : Mr.Md. Anzarul Haque Sahara

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 16-04-2025 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 Athmalgola Case No. 418 of 2024 dated 23.12.2024 registered for the offence punishable u/ss 281, 125, 338 read with Section 3(5) of B.N.S., 2023 and Section 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 110 litres of illicit Windlas Syrup kept in six sacks was recovered from the Maruti Dezire Car driven by the co-accused/driver who fled away but the petitioner was apprehended by the police while sitting in the said car.

4. Learned counsel for the petitioner has submitted



that the petitioner is innocent and has falsely been implicated in this case. The prosecution has been lodged against the petitioner under section 30(a) of the Bihar Prohibition and Excise Act not the N.D.P.S. Act. The petitioner is neither the owner nor the driver rather he is the co-passenger of the seized vehicle. Nothing has been recovered from the conscious possession of the petitioner. The petitioner has no concern with alleged recovery. The petitioner has no criminal antecedent as stated in para 3 of the bail petition. The petitioner is in custody since 23.12.2024.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that as per the impugned order on the basis of the chemical examination it is found that the seized contraband is 110 litres of **Windlas Syrup contains codeine phosphate** and the petitioner has no any valid authorization for keeping the same. The petitioner was one of the occupants of the said car at the time of alleged occurrence. 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 APP 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 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". It is further submitted that codeine is mentioned in the Entry No. 28 of the N.D.P.S. Act. 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.

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 material available on the record this Court is not inclined to grant bail to the petitioner and the same is rejected in connection with Athmalgola Case No. 418 of 2024, pending in the Court of learned Exclusive Special Judge, Excise Act, Barh, (Patna).

9. Learned trial court is directed to conclude the trial of the petitioner at the earliest.

(Chandra Prakash Singh, J)

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