

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31277 of 2025

Arising Out of PS. Case No.-111 Year-2023 Thana- KUNAU LI District- Supaul

=====

Avinash Kumar, aged about 34 years, Sex-Male, S/o Ashok Kumar Kamat @
Ashok Kumar, R/o Village- Kunauli, Ward No. 12, P.S.- Kunauli, District-
Supaul

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

=====

Appearance :

For the Petitioner : Mr. Ansul, Sr. Advocate and Mr. Manish Kumar
No. 13, Advocate

For the Opposite Party : Mrs. Sharda Kumari, A.P.P.

=====

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

ORAL ORDER

2 21-07-2025 Heard learned senior counsel for the petitioner and
learned A.P.P. for the State.

2. The petitioner seeks bail in connection with
Kanhauli P.S. Case No. 111 of 2023 dated 04.10.2023 giving
rise to N.D.P.S. Case No. 52 of 2023 registered for the offences
punishable under Sections 21(c) and 22 (c) of the N.D.P.S. Act.

3. As per the prosecution case, on 03.10.2023 at about
6.30 P.M., police apprehended Avinash Kumar (petitioner) and
the co-accused Tinku Lal Sah and on search, Dialex-DC-15
Nos., Wincerex-T 30 Nos., and Onrex-83 Nos., alongwith a
Bicycle and two mobile phones were recovered from their
possession.



4. Earlier prayer for bail of the petitioner was rejected in Cr. Misc. No. 17289 of 2024 vide order dated 16.07.2024 with a direction to the learned court below to conclude the trial of the petitioner at the earliest, annexed as Annexure-P/1 to the present bail petition.

5. Learned senior counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. It is submitted that nothing has been recovered from the conscious possession of the petitioner. The petitioner is a local resident of the said area and he was made scapegoat by the prosecution without his fault. The petitioner has no concern with the alleged offence. It is further submitted by learned senior counsel for the petitioner that vide judgment dated 12.04.2021, passed by a Larger Bench in Cr.W.J.C. No. 887 of 2013, it was held that the seized materials (Codeine Cough Syrup) will come under the purview of the Drugs and Cosmetics Act, regarding which only complaint will lie. Admittedly, the F.I.R. lodged in the present case is against the law laid down by this Hon'ble Court. The entire prosecution is based on suspicion and surmises and there is no any legal evidence or cogent materials to connect the petitioner in the alleged offence. It is further submitted that from perusal of the



F.I.R., it is evident that only alleged recovery of items were given but no weight was mentioned to ascertain the quantity of the alleged recovery of the items. The petitioner has one criminal antecedent which is not of similar nature of offence and in which case, he is on bail as stated in paragraph no. 3 of the bail petition. The petitioner is in custody in this case since 04.10.2023.

6. Learned APP for the State has vehemently opposed the bail petition of the petitioner. As per the F.S.L. report, Codeine was found in the aforesaid seized contraband and the petitioner had no valid authorization for keeping the aforesaid contraband. Learned counsel for the 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".

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.

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.”

7. Considering the aforesaid facts and circumstances of the case and the finding substance in the learned A.P.P. for the State, this Court is not inclined to grant bail to the petitioner and the same is again rejected in connection with Kanauli P.S. Case No. 111 of 2023, giving rise to N.D.P.S. Case No. 52 of 2023,



pending in the court of learned Additional Sessions Judge-II-
cum-Special Judge, N.D.P.S., Supaul.

8. The application of the petitioner stands again
rejected.

9. Learned court below is again directed to expedite
the trial of the petitioner and conclude the same at the earliest.

(Chandra Prakash Singh, J)

U.K./-

U		T	
---	--	---	--

