

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31770 of 2025

Arising Out of PS. Case No.-72 Year-2025 Thana- Excise P.S. District- Khagaria

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1. GANDHI KUMAR S/O KEDAR YADAV R/o vill - Barkhandi Tola, P.S.- Muffasil, Distt.- Khagaria
 2. Ramratan Kumar S/o Late Upendra Yadav R/o vill - Durgapur, ward no. 7, P.S.- Muffasil, Distt.- Khagaria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rahul Singh, Adv.

For the Opposite Party/s : Mr. Shyam Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

5 01-09-2025 Heard learned counsel for the petitioners and learned APP for the State.

2. The petitioners have preferred this application for grant of regular bail in connection with Khagaria Excise P.S. Case No. 72/2025 dated 05.03.2025 registered for the offence punishable u/ss 30(a) and 30(f) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 51.800 litres of codeine phosphate and Triprolidine HCL syrup, RTX-SCEN cough syrup was recovered from the tempo.

4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been



implicated in this case. The name of the petitioners has sprung up in this case on mere suspicion. Nothing has been recovered from the conscious possession of the petitioners. The petitioners have no concern with the alleged occurrence. The petitioners have clean antecedent as stated in para 3 of the bail petition. The petitioners are in custody in this case since 06.03.2025.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioners by submitting that the seized contraband is commercial quantity i.e. 51.800 litres of codeine phosphate and Triprolidine HCL syrup, RTX-SCEN cough syrup and the petitioners have 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 APP for the State has relied on the judgment of **Rabi Prakash vs. The State of Odisha in Special Leave to Appeal (Crl.) No(s). 4169 of 2023.** It is further submitted that there is no prolonged incarceration. The said recovery was made from the tempo and the petitioners were the occupants of the said tempo who are allegedly stated to be the owner-cum-driver (petitioner no.1) and the passenger (petitioner no.2) of the said vehicle. Learned APP for the State has further 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 recovery of commercial quantity from the conscious possession of the petitioners, this Court is not inclined to grant bail to the petitioners and the same is rejected in connection with Khagaria Excise P.S. Case No. 72/2025 pending in the Court of learned Special Judge (Excise)-II, Khagaria.

9. The application stands rejected.

(Chandra Prakash Singh, J)

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