

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86113 of 2024

Arising Out of PS. Case No.-257 Year-2024 Thana- HARLAKHI District- Madhubani

Abhishek Kumar Sah Son of Mohan Kumar Sah Resident of Village -
Jankapur Dham Nagar Palika, Ward No. 11, P.S. - Dhanusha, District -
Dhanusha (Nepal)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Jha, Adv.
For the Opposite Party/s : Mr. Choubey Jawahar, APP

**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

ORAL ORDER

6 07-07-2025 Heard learned counsel for the petitioner and Mr.
Choubey Jawahar, learned APP for the State.

2. The petitioner seeks bail in connection with
Harlakhi P.S. case No. 257 of 2024 instituted for the offences
under Sections 20, 22 of the N.D.P.S. Act.

3. As per prosecution case, the petitioner was carrying
a gunny bag from which 300 Nitrazepam tablets (10 mg each),
144 capsules of Spasmo-Proxyvon Plus, 70 bottles of Exiplon
cough syrup, 30 tablets of Nitazepam (10 mg each) and one Red
Mi mobile were recovered.

4. Learned counsel for the petitioner submitted that the
petitioner is innocent and has falsely been implicated in the
present case. Petitioner is in custody since 27.09.2024 and has



no criminal antecedent. There is no allegation of tampering of witnesses alleged against the petitioner. Nothing incriminating has been recovered from the conscious possession of the petitioner. The petitioner has nothing to do with the seized medicines. The petitioner has also no concern with the alleged vehicle and the police has falsely implicated the petitioner in the present case. He further submits that the police arrested the petitioner and the Informant took his extra judicial confession and also took his signature in plain paper. There is no compliance of Section 42 and 50 of the N.D.P.S. Act. There is also non-compliance of Section 103 of the B.N.S.S.

5. Learned A.P.P. for the State has vehemently opposed the prayer for grant of bail to the petitioner. Learned counsel for the State has filed counter affidavit and supplementary counter affidavit in this case. In the supplementary counter affidavit, it has been stated that in this case, from the possession of petitioner, 3.3 gram of Nitrazepam has been recovered which is less than the small quantity. It is further stated that the police has also recovered 7.2 gram of Tramadol which also comes below the commercial quantity. Again, the police has recovered 70 pieces of Exiplon cough syrup of 100 ml each i.e. 7 litres which contains 14 gram of



codeine which is also below the commercial quantity. Learned APP for the State has also annexed FSL report stating therein that codeine & opiate @ prodrug of morphine was detected.

6. Learned APP has further relied upon a case of Hon'ble Supreme Court since reported in **(2020) 20 SCC 272 (Hira Singh and another vs. Union of India and another)** in which the Hon'ble Apex Court held that in case of seizure of mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by way of offending drug while determining the "small or commercial quantity" of narcotic drugs or psychotropic substance. He further submits that according to Hira Singh case (supra), 7 liter codeine comes under the preview of much more than the commercial quantity. The Investigating Officer, after completion of investigation has submitted charge-sheet vide C/S No. 248 of 2024 dated 20.12.2024. Learned APP submits that the recovered contraband is above the commercial quantity, hence, there is bar under Section 37 of the N.D.P.S. Act.

7. Considering the aforesaid facts and circumstances of the case and recovery of contraband beyond commercial



quantity coupled with embargo under Section 37 of the N.D.P.S. Act, this Court is not inclined to grant bail to the petitioner.

8. The prayer is rejected with a direction to the learned court below to expedite the trial and conclude the same expeditiously.

(Rudra Prakash Mishra, J)

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