

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86509 of 2024

Arising Out of PS. Case No.-105 Year-2024 Thana- SUPAUL District- Supaul

Chandra Kishor Kumar @ Chandu S/o- Bechan Sutihar Moh- Kajaha, Ward
No 14, Ps-Supaul, Dist- Supaul

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Choubey Jawahar, APP

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

ORAL ORDER

6 01-08-2025 Heard Mr. Ashok Kumar Mishra, learned counsel
for the petitioner and Mr. Choubey Jawahar, learned APP for the
State and perused the case diary.

2. The petitioner seeks bail in connection with Supaul
P.S. Case No. 105 of 2024, instituted for the offences punishable
under Sections 21(b) of the NDPS Act.

3. Prosecution allegation, in short, is that there is
recovery of 177 bottle of 100 ml each Codeine Syrup Wiscuf
from one bag and one sack from the motorcycle of the
petitioner.

4. Learned counsel for the petitioner submits that the
petitioner is innocent and has falsely been implicated in the
present case. Charge-sheet has been submitted in this case. No



incriminating material has been recovered from the conscious possession of the petitioner. Learned counsel for the petitioner further submits that the petitioner was not arrested at the place of occurrence. Name of the petitioner has transpired in this case as being owner of the motorcycle in question. The petitioner was not present at the place of occurrence and no recovery has been made from the possession of the petitioner. The petitioner is in custody since 24.07.2024 and has got one criminal antecedent in which he is on bail. There is no compliance of Sections 42 and 50 of the N.D.P.S. Act.

5. Learned A.P.P. for the State has vehemently opposed the prayer for grant of bail to the petitioner and has filed a counter affidavit in the matter stating that total 177 bottle of Codeine Phosphate & Triprolidine Hydrochloride Syrup Wiscuf 100 ml each i.e. 17700 ml (17.7 liters) was recovered. It is next submitted that 17.7 liters of Cough Syrup equals to 35.4 grams of Codeine Phosphate. The alleged contraband found in the cough syrup is less than commercial quantity. Learned A.P.P. has further relied upon a case of Hon'ble Supreme Court since reported in **(2020) 20 SCC 272 (Hira Singh and Another versus 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 and thus, the total recovery of 17.7 liters of codeine containing cough syrup is a psychotropic drug and it is also more than the commercial quantity of 1 Kg. Learned A.P.P. submits that recovered contraband is above the commercial quantity, hence, there is bar under Section 37 of the N.D.P.S. Act and the petitioner does not deserve the privilege of bail.

6. 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.

7. The prayer is rejected.

(Rudra Prakash Mishra, J)

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