

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.88668 of 2024

Arising Out of PS. Case No.-229 Year-2024 Thana- Excise P.S. District- Supaul

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1. Gulshan Kumar Son of Shri Badri Kumar Paswan @ Badri Paswan Resident of Village/Mohalla- Adarsh Nagar, Ward No. 7, P.S.- Supaul, Distt.- Supaul, Bihar
 2. Shivam Kumar Son of Shri Mantu Kumar Paswan @ Mantu Paswan Resident of Village/Mohalla- Adarsh Nagar, Ward No. 7, P.S.- Supaul, Distt.- Supaul, Bihar

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ravi Kant Kumar, Adv.
For the Opposite Party/s : Ms. Sharda Kumari, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

4 10-04-2025 Heard learned counsel for the petitioners and learned
A.P.P for the State.

2. The petitioners have preferred this application for grant of regular bail in connection with Excise Supaul P.S. Case No. 229/2024/ Miscellaneous Excise Case No. 3515 of 2024 dated 19.09.2024 registered for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 280 litres of wiscof cough syrup was recovered from the Scorpio car allegedly driven by the co-accused person. It is further alleged that the petitioners were found sitting inside the said vehicle who were apprehended by police while fleeing away.



4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioners. The petitioners are not the owner of the said vehicle. The petitioners have no criminal antecedent as stated in para 3 of the bail petition. The petitioners are in custody since 19.09.2024.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioners by submitting that the petitioners were also occupant of the said vehicle. Learned counsel has further submitted that the seized contraband is commercial quantity i.e. 280 litres of wiscof cough syrup containing codeine. It is further submitted that this case comes under the NDPS Act and Drugs and Cosmetics Act as per section 80 of the NDPS Act. Learned APP for the State also 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". The petitioners had no valid authorization for keeping the same. Learned counsel has further submitted that the bail petitioner of the co-accused person has already been rejected by this court vide order dated 05.02.2025



passed in Cr. Misc. No. 85305 of 2024.

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 of wiscof cough syrup containing codeine 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 Excise Supaul P.S. Case No. 229/2024/ Miscellaneous Excise Case No.



3515 of 2024, pending in the court of learned Exclusive Special
Judge, Excise Court No. 2, Supaul.

9. The application stands rejected.

(Chandra Prakash Singh, J)

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