

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1774 of 2025

Arising Out of PS. Case No.-79 Year-2024 Thana- JOGBANI District- Araria

Pradhumn Das @ Pradhuman Das, Male, aged about 26 years, S/o- Bahuran Das, R/o- Indranagar, Ward No. 03, Tikuliya Basti, PS-Jogbani, Dist- Araria.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Rabindra Kumar Priyadarshi, Advocate
For the Opposite Party : Mr. Ram Anurag Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 14-02-2025 Heard learned counsel for the petitioner and learned A.P.P for the State.

2. Earlier the prayer for regular bail application of the petitioner was rejected by a Bench of this Court vide Cr. Misc. No. 48961 of 2024 under order dated 07.08.2024.

3. This is second attempt on behalf of the petitioner for grant of bail.

4. The petitioner has preferred this application for grant of regular bail in connection with Jogbani P.S. Case No. 79 of 2024 dated 13.04.2024 registered for the offences punishable under Sections 21(a) and 22 of the N.D.P.S. Act.

5. As per the prosecution case, 50 bottles each 100 ml (total 5 litres) codeine rich Eskuf Cough Syrup was recovered



from the possession of the petitioner.

6. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. No recovery from conscious possession of the petitioner was made and the police for oblique reason got implicated the petitioner in the present case. There is no statutory compliance of Sections 42 and 43 of the N.D.P.S. Act. Learned counsel has further submitted in para 8 of the bail petition that the alleged recovery is a medicine used in cough and cold and in each 100 ml bottle only 200 mg codeine substance is to be there and if for the purpose of argument if it is accepted to be true even then it is around 10 gms. codeine substance which is much below the commercial quantity. It is further submitted that as per the N.D.P.S. Act, the small quantity of codeine is 10 gm whereas the commercial quantity is 1 kg, therefore, the alleged recovery comes within the purview of small quantity for which the petitioner has suffered a lot. The petitioner has clean antecedent as stated in para 3 of the bail petition. The petitioner is in custody since 13.04.2024.

7. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner. The seized contraband is commercial quantity i.e. 5 litres of codeine syrup. It is further



submitted that as per entry 28 of the list of NDPS Act, small quantity of codeine as defined is 10 gram and commercial quantity of codeine as defined is 1 Kg. The accused at this stage cannot be presumed to be 'not guilty' of the offence that he is charged with. The petitioner had no any valid authorization for keeping the same. 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".

8. 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.

9. 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 a considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the N.D.P.S. Act.”

10. Considering the aforesaid facts and circumstances of the case as well as the recovery of commercial quantity from the possession of the petitioner, this Court is not inclined to enlarge the petitioner on bail and the same is rejected in connection with Jogbani P.S. Case No. 79 of 2024, pending in the court of learned Sessions Judge-cum-Special Judge, N.D.P.S., Araria.

11. The application again stands rejected.

(Chandra Prakash Singh, J)

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