A.F.R.

Reserved on: 29.05.2026

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2026:AHC-LKO:40415

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW
CRIMINAL MISC. BAIL APPLICATION No. - 1908 of 2026

Varun Lat (Lath)

.....Applicant(s)

Versus

State of U.P. Thru. Prin. Secy. Home Deptt. Lko.

.....Opposite Party(s)

Counsel for Applicant(s)	:	Ayodhya Prasad Mishra A.p. Mishra, Rituraj Mishra, Shesh Ram Verma
Counsel for Opposite Party(s)	:	Shri Anoop Trivedi, AAG. Shri Alok Tiwari, A.G.A.

Court No. - 14

HON'BLE RAJEEV BHARTI, J.

1. Heard Shri Ayodhya Prasad Mishra, learned counsel for the applicant, Shri Anoop Trivedi, learned Additional Advocate General who has appeared through Video Conferencing, assisted by Shri Alok Tiwari, learned AGA, and perused the record.

2. This is first bail application filed on behalf of the applicant who is involved in Case Crime No. 244 of 2025, under Sections 8/21/29 of the N.D.P.S. Act, Police Station- Tulsipur, District Balrampur.

3. The prosecution case in brief is that the informant Shri Sumit Kumar Verma, Drug Inspector submitted a written report to the SHO, Police Station Tulsipur stating that he is posted as Drug Inspector in

District Gonda and is also holding additional charge of District Balrampur. Pursuant to the directions received from the Headquarter of Food Safety and Drug Administration, UP, Lucknow, Shri Shrikant Gupta, Drug Inspector inspected M/s Ashok Medical Store, Tulsipur, Balrampur on 16.10.2025. During the inspection, the proprietor of the firm Shri Ashok Kumar Lath was present and produced drug sale license bearing No. UP 4720800175 and UP 4721800175, which were valid up to 31.12.2026. During the inspection, he was required to produce purchase and sale invoices relating to 'codeine-based medicine, Codeiva 100 ml and Proxiwim Spas capsules' for the periods from 01.04.2024 to 31.03.2025 and from 01.04.2025 to 11.10.2025, as per the list supplied by the Headquarters. However, the same were not produced at the spot.

4. Consequently, he was directed to furnish the said invoices, considering the deficiencies found during inspection. The purchase and sale operations of the firm were suspended under Section 21(1)(d) of the Drugs and Cosmetics Act, 1940 until further orders. Thereafter, Shri Ashok Kumar produced certain purchase invoices relating to the aforesaid medicines.

5. Upon scrutiny of the purchase and sale records, it was found that the complete details relating to procurement and disposal of Codeiva cough syrup 100 ml and Proxiwim Spas capsules had not been furnished.

6. It is further submitted that not only above, the prosecution has tried to implicate the applicant in the present case on the basis of some affidavit taken under pressure from the applicant stating therein that he purchased some of cough syrup from M/s. Ashok Medical Store situated in Nai Bazar, Tulsipur, District- Balrampur and without providing any sale bill to the drug inspector. It has been presumed that the cough syrup purchased by applicant firm was diverted for other

work than medicinal purposes assuming that he is guilty of the offence as provided under NDPS Act, that's why he has been sent to jail in the present case only with the presumption suspicion and imagination that the same was sold to the person other than medicinal purposes which was absolutely false, incorrect and erroneous presumption of the prosecution of the applicant.

7. It is also significant to mention here that the applicant is running the business of whole sale medical store of drug medicines in the name and style of M/s. Shyam Pharma situated in Purani Bazar, Tulsipur, District - Balrampur specified in Schedule C and C(1) excluding those specified in Schedule-X through Form 21-B and through Form 20-B the drug medicines excluding specified in the schedules C, C (1) and X for its sell, stock (or offer), or offering for sale, or distribute by whole sale under the drug licence vide No. UP04720B000197 as well as Licence No. UP04721B000197 dated 13.03.2020 granted by the drug licencing authority under Rule 61 (1) and (2) through Form 20-B and Form 21-B of the Drug and Cosmetics Rules, 1945 with the conditions stipulated under Rule 65 of Rules, 1945.

8. During inspection, the proprietor of the firm could not produce the sale bill of alleged drug medicine CODIEVA cough syrup 100 ml, in question.

9 It is further alleged that the firm in question has misused the drug licence granted by drug licensing authority and sold the codeine cough syrup in open market without medical prescription to the persons to get their pecuniary benefit by misusing the provisions of Act, 1940 as well as Rules, 1945.

10. It is further submitted that though the applicant is not named in the F.I.R. and even there is no allegation of any kind against him in the F.I.R. but under the pressure of higher authority, the name of the

applicant has also been added in the present case and reason is best known to the authority concerned.

11. It is further submitted that in fact, the alleged cough syrup falls within the category of Schedule H-1 of the Drug and Cosmetics Act and Rules, 1945 and for, sale and stocking of such drug, the applicant has been granted drug licence by drug licensing authority, hence, he has legal right to sell, sale and stock of drug medicines in question according to the terms and conditions of the licence.

12. It is further submitted that the applicant firm purchased 14,040 bottles cough syrup from M/s. Ashok Medical which is a registered and licensee firm granted by drug authorities.

13. It is also submitted that there is no provision under NDPS Act for prosecution of any person in respect of such diversion of cough syrup, if any, is being done by any person except under Act, 1940, hence, even though if any offense is constituted against the applicant then it is as only under the provisions of Act, 1940 but not under NDPS Act.

14. Learned counsel for the applicant has submitted that the applicant is not named in the FIR and was arrested only during the course of investigation. It has been argued that the applicant is a licensed wholesale dealer in medicines and holds valid drug sale licenses. The allegation against him is that the firm named in the FIR sold Codeine cough syrups to the applicant and solely on that basis, he has been implicated in this case.

15. It has further been submitted that being a valid license holder, the applicant is legally entitled to purchase and sell medicines. Mere purchase of codeine containing medicines cannot attract the provisions of the NDPS Act.

16. Reliance has been placed by the learned counsel for the applicant upon the Government Notifications dated 14.11.1985 and 29.01.1993, which deal with preparations containing methyl morphine and ethyl morphine and such preparations are compounded with one or more ingredients, not more than 100 mg of codeine per dose unit and with a concentration of not more than 2.5% in undivided preparation and are established for therapeutic practice.

17. It is also submitted that CODEIVA cough syrup contained 100 mg in 5 ml dose per unit, the concentration being only 0.2% which is well below the prescribed limit of 2.5%. Therefore, the medicine does not fall within the category of narcotic drugs and prohibitions contained in the NDPS Act are not attracted in this case. It has further been submitted that no recovery has been effected from the applicant; there is no evidence of unauthorized sale done by him; he is having no previous criminal history; and he undertakes to cooperate with the trial and comply with all the conditions that may be imposed by the Court.

18. It is further submitted that there is non-compliance of Section 42 of the NDPS Act as the prosecution has not placed any document to show that any alleged prior information regarding illicit involvement in the narcotic drugs was reduced into writing and forwarded to the superior officer within the prescribed time.

19. Reliance has also been placed upon the judgments of the Hon'ble Apex Court in **Karnal Singh Vs. State of Haryana : (2009) 8 SCC 539 (Relevant paras 15 and 17), State of Rajasthan Vs. Jag Raj Singh @ Hansa : (2016) 11 SCC 687 (Relevant paras 15, 24 to 27), Vibhor Rana Vs. Union of India : 2021 SCC Online All 908, Ashok Kumar vs. Union of India : 2015 SCC 89 824 (Relevant para 102), Vihaan Kumar vs. State of Haryana & Another : 2015 SCC Online SC 269 (Relevant paras 26 to 28, 31, 33)** and **Mihir Rajesh Shah vs. State of**

Maharashtra and another, (2026) 1 SCC 500, the relevant para nos. 62 to 66.4 thereof are being quoted herein under:-

> *"62. We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed 2 (2026) 1 SCC 500 in flagrante delicto, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the Magistrate for remand proceedings. The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the Magistrate.*
>
> *"63. The above indicated lower limit of two hours minimum interval before the production is grounded in the functional necessity so that the right as provided to an arrestee under the Constitution and the statute is safeguarded effectively. This period would ensure that the counsel has adequate time to scrutinize the basis of arrest and gather relevant material to defend the arrestee proficiently and capably while opposing the remand. Any shorter interval may render such preparation illusory, thereby resulting in non-compliance of the constitutional and statutory mandate. The two-hour threshold before production for remand thus strikes a judicious balance between safeguarding the arrestee's constitutional rights under Article 22(1) and preserving the operational continuity of criminal investigations.*
>
> *"64. In view of the above, we hold with regard to the second issue that non-supply of grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate such arrest on the grounds of non-compliance with the provisions of Section 50CrPC (now Section 47 of BNSS 2023) provided the said grounds are supplied in writing within a reasonable time and in any case two hours prior to the production of the arrestee before the Magistrate for remand proceedings.*

"65. It goes without saying that if the abovesaid schedule for supplying the grounds of arrest in writing is not adhered to, the arrest will be rendered illegal entitling the release of the arrestee. On such release, an application for remand or custody, if required, will be moved along with the reasons and necessity for the same, after the supply of the grounds of arrest in writing setting forth the Explanation for non-supply thereof within the above stipulated schedule. On receipt of such an application, the Magistrate shall decide the same expeditiously and preferably within a week of submission thereof by adhering to the principles of natural justice.

"66. In conclusion, it is held that:

66.1. The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC, 1860 (now BNS 2023);

66.2. The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

66.3. In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the Magistrate.

66.4. In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free."

(emphasis supplied)

20. It is further submitted that no written grounds of arrest were served upon the applicant at any point of time. Mere disclosure of the reason of arrest cannot be equated with communication of the grounds of arrest. The applicant was arrested on 01.02.2026. Therefore, the subsequent clarification in **Mihir Rajesh Shah (supra)** regarding written grounds of arrest was also relevant on the date of arrest.

21. Learned counsel for the applicant further submits that the applicant holds a valid wholesale licence for the sale and distribution of drugs in the name of M/s Ashok Medical Store. It is also submitted that in view of the fact that the drugs in question were mentioned in Schedule H1 (Serial No.20) appended to the Drugs and Cosmetic Rules

and there is nothing on record to indicate that the same constitute narcotic drugs.

22. Reliance has also been placed upon by the learned counsel for the applicant in the case of ***Vibhor Rana v. Union of India, 2021 SCC OnLine All 908,*** this Court at Allahabad was seized with the writ petition, involving question whether "New Fancy Deal Linctus Cough Syrup" is a narcotic drug and it comes within the purview of N.D.P.S., Act. In the said judgement, this Court has held as under :-

> *"23. Thus, as per the aforesaid Notification, if any drug contains not more than 100 milligrams of Methyl Morphine, which is commonly known as Codeine, per dosage unit, and in that drug Codeine is compounded with one or more other ingredients and if in the drug the concentration of Codeine is not more than 2.5% in undivided preparations and the drug has been established in Therapeutic practice, will not be a "Manufactured Drug" and, therefore, it will not be a "Narcotic Drug".*
>
> *24. The prohibition contained in Section 8 of the Act is applicable to "Narcotic Drugs" and since Phensedyl New Cough Linctus contains Codeine compounded with one other ingredient, namely Chlorpheniramine Maleate and since Phensedyl New Cough Linctus contains merely 10 milligrams per dosage unit of 5 ml, which is not more than 100 milligrams of the drug per dosage unit in undivided preparations and the concentration of Codeine in Phensedyl New Cough Linctus is merely 0.2%, which obviously is not more than 2.5% and which has been established in Therapeutic practice, it is not a "Manufactured Drug" and, therefore, it is not a "Narcotic Drug", the prohibition contained in Section 8 of the Act does not apply to it.*
>
> *25. Phensedyl New Cough Linctus contains Codeine which is mentioned at Serial Number 20 in Schedule H1 appended to the Drugs Rules, 1945 and a note appended to Schedule H1 provides that "Preparations containing the above drug substances and their sales excluding those intended for topical or external use (except opthalmic and ear or nose preparations) containing above substances are also covered by this Schedule". Therefore, Phensedyl New Cough Linctus is a drug covered by the Drugs and Cosmetics Act, 1940.*

26. To clarify this position, on 26.10.2005 the Drug Controller General of India had written letter to all the State Drugs Controllers stating as follows:

> *"As you are aware there are number of Cough preparations like Corex of M/s Pfizer Ltd. Mumbai, Phensedyl of M/s.Nicholas Piramal India Limited, Mumbai, Codokuff of M/S. German Remedies, Codeine Linctus of M/s Zydus Alidac etc.moving in inter state commerce. These preparations contain among other drugs Codeine Phosphate 10 mg as one of the ingredients. By virtue of the fact that these preparations contain Codeine and it salts they do not fall under the provisions of NDPS Act and Rules of 1985 but they fall under Schedule H of the Drugs and Cosmetics Rules and are governed by the said rules. Though stocking and sale of these drugs do not attract the provisions of NDPS Act and Rules 1985 however these formulations are prescriptions drugs and are to be dispensed on the prescriptions drug and are to be dispensed on the prescription of a registered Medical Practitioner only. Further you may be already aware that under notification number S.O. 826(E) dated 14th Nov.1985 under the Narcotic Drugs and Psychotropic Substances Act and Rules 1985 certain preparations are exempted as manufactured drugs provided the preparations contain the Narcotic drug to the extent permitted. In respect of Codeine under entry no. 35 it is stated that Codeine and Ethyl Morphine and their salts including Dionine all dilutions and preparations are considered to be manufactured drugs except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations and which have been established in therapeutic practice."*

27. In March 2009 the Drugs Controller General (India) had issued a letter to the Associated Chambers of Commerce and Industry of India in response to a request for clarification of drug substance Cough Linctus containing codeine Phosphate stating that:--

> > *"In this connection this Directorate had already issued a circular letter vide our letter number X-11029/27/05-D dated 26/10/2005 to all State Drugs Controllers with a copy to various associations and copy Narcotic Control Bureau New Delhi (copy enclosed). The above circular inter alia stated that these preparations (Cough Linctus containing Codeine Phosphate) contains among other drugs Codeine Phosphate 10 mg as one of the ingredients. By virtue of the fact that these preparations contain Codeine and its salts they do not fall under the provisions of NDPS Act and the Rules of 1985 but they fall under Schedule H of the Drugs and Cosmetic Rules and are governed by the said rules. Though stocking and sale of these drugs do not attract the provisions of NDPS Act and Rules 1985, however these formulations are prescriptions drugs and are to be dispensed on the prescriptions of a registered Medical Practitioner only. Further you may be aware that under notification number S.O.826(E) dated 14th November, 1985 under the Narcotic Drugs and Psychotropic Substances Act and Rules 1985*

> *certain preparations are exempted as manufactured drugs provided the preparations contain the Narcotic drug to the extent permitted. In respect of Codeine under entry no. 35 it is stated that Codeine and Ethyl Morphine and their salts including Dionine all dilutions and preparations are considered to be manufactured drugs except those which are compounded with one or more other ingredients and containing not more than 100 miligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations and which have been established in therapeutic practice."*

23. It is further submitted that the applicant has no criminal history and is in jail since 1.2.2026. There is no possibility of the applicant fleeing away after being released from jail or tampering with the prosecution witnesses. He undertakes that in case the applicant is enlarged on bail, he shall not misuse the liberty of bail.

24. *Per contra*, Shri Anoop Trivedi, learned AAG and Shri Alok Kumar Tiwari, learned AGA have vehemently opposed the prayer for bail and submitted that the material collected during investigation discloses involvement of the applicant in a systematic and organized chain relating to procurement and distribution of codeine-based cough syrup. It is further submitted that the quantity is of enormous magnitude and falls within the commercial quantity.

25. Learned AAG further submits that during investigation, it was found that thousands of bottles were purchased and distributed by the applicant and the transactions are not supported by complete statutory requirements. It is further argued that mere possession of a wholesale drug license does not confer immunity from prosecution. The prosecution case is that the medicine preparation was being diverted for non-medicinal use and the investigation has revealed circumstances indicating conscious involvement of the applicant in such activities. It is further submitted that the rigours of Section 37 of the NDPS Act are attracted in this case as the applicant has failed to satisfy the twin conditions prescribed therein.

26. Learned AAG has further submitted that the quantity involved is of commercial quantity. In view of the law laid down by the Hon'ble Supreme Court in **Hira Singh (supra),** the entire picture is to be considered while determining the commercial quantity. The total quantity involved is far beyond the notified commercial quantity of codeine (1 kg), thereby directly attracting the rigours of Section 37 of the NDPS Act. According to the State, as many as 100 FIRs have already been registered alleging diversion of codeine-based cough syrup. The allegations against the accused persons are of organizing a syndicate on a large scale within the State as well as in other states, including the alleged smuggling to Bangladesh.

27. Learned AAG has placed reliance on the judgements of the Hon'ble Apex Court in **Md. Sahabuddin & another vs. State of Assam, MANU/SC/0836/2012; Hira Singh and others vs. State of West Bengal (Special Leave to Appeal (Crl.) No.12419/2024;** and **Union of India vs. Sanjeev V. Deshpande, (2014) 13 SCC 1**.

28. Learned AAG submitted that even if codeine constitutes less than 2.5 per cent of the total preparation of cough syrup, it comes in the category of manufactured narcotic drugs, though, it has been categorized as essential drugs. But even possession of such essential drug is regulated by the N.D.P.S., Act and in violation of such regulations, the applicant is liable to be prosecuted under the N.D.P.S., Act. In this regard, he refers to and relies upon the following judicial precedents:-

(i) Mohd. Ahsan Vs. Customs, 2022 SCC OnLine Del 2910

(ii) Azhar Javad Rather Vs. UT of J and K, AIR OnLine 2023 J & K 270

29. In Mohd. Ahsan case (supra), there was recovery of 110 bottles of cough syrup "New Fancy Drug Linctus Cough Syrup" containing a minuscule quantity of codeine i.e 0.17 per cent in each bottles. Here, Delhi High Court referred to all relevant statutory provisions of

the N.D.P.S., Act and the relevant judicial precedents including the Vibhor Rana case (supra) and held that even in case of cough syrup, the N.D.P.S. Act and the Rules as made thereunder are applicable. It has further held that in the Vibhor Rana Case (supra), Section 9 of the N.D.P.S. Act, providing for power to the Central Government to control and regulate and consequent Central Government Notifications were not considered.

Jammu and Kashmir High Court has also taken similar view in Azhar Javad Rather case (supra).

30. Before considering the aforesaid rival contentions of the parties, it is imperative to discuss the relevant statutory provisions and binding judicial precedents.

31. The NDPS Act and the Rules made thereunder are in addition to and not in derogation of the Drugs and Cosmetics Act, 1940 of the Rules made thereunder as has been clearly provided under Section 80 of NDPS Act which reads as follows:

> *"80. Application of the Drugs and Cosmetics Act, 1940 not barred.--The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder."*

32. The Drugs and Cosmetics Act, 1940 deals with the drugs which are intended to be used for therapeutic or medical uses. The NDPS Act, on the other hand, is a special law and it intends to curb and penalize the use of narcotic drugs which are used for intoxication or for getting stimulant effect.

33. The Drugs and Cosmetics Act is intended to prevent sub-standard drugs and to maintain high standards of medical treatment and curtail the menace of adulteration of drugs and also of the production, manufacture, distribution and sale of spurious and sub-standard drugs. However, the NDPS Act, on the other hand, intends to

control and regulate the operation relating to Narcotic Drugs and Psychotropic Substances. In this context, one may refer to the following judicial precedents:-

(i) Directorate of Revenue Intelligence vs. Raj Kumar Arora, 2025 SCC OnLine SC 819

(ii) State of Punjab vs. Rakesh Kumar, (2019) 2 SCC 466 Patna High Court CR. MISC. No.54100 of 2025 dt.27-08-2025

(iii) Union of India vs. Sanjeev V. Deshpande, (2014) 13 SCC 1

34. Now coming to the statutory provisions of the NDPS Act, one may find that Section 8 prohibits certain operations. Section 8 reads as follows:-

"8. Prohibition of certain operations.- No person shall-
(a). xxxxx
(b) xxxxx
(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes."

(Emphasis supplied)

35. However, Section 9 of the NDPS Act gives power to the Central Government to permit, control and regulate certain operations. It reads as follows:-

> *"9. Power of Central Government to permit, control and regulate.- (1) Subject to the provisions of section 8 Central Government may, by rules-*
>
> *(a) permit and regulate--*
>
> *..... .....*
>
> *(va) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of essential narcotic drugs:*
>
> *Provided that where, in respect of an essential narcotic drug, the State Government has granted licence or permit under the provisions of section 10 prior to the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, such licence or permit shall continue to be valid till the date of its expiry or for a period of twelve months from such commencement, whichever is earlier.*
>
> *(vi) the manufacture, possession, transport import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;*
>
> *.....*
>
> *(ha) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of essential narcotic drugs, the authorities by which such licence or permit may be granted and the fees that may be charged therefore;*
>
> *(i) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances, the authorities by which such licences or permits may be granted and the fees that may be charged therefore;*
>
> *....."*
>
> *(Emphasis Supplied)*

36. Section 21 of the NDPS Act provides for punishment for contravention in relation to manufactured drugs and preparations. It reads as follows:-

"21. Punishment for contravention in relation to manufactured drugs and preparations.- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,--

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

(Emphasis Supplied)

37. Section 2 (xi) of the NDPS Act defines the word "manufactured drug". It reads as follows:-

"2 (xi). "manufactured drug" means--

(a) all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate;

(b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a manufactured drug;

but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug;"

(Emphasis Supplied)

38. Section 2 (viiia) defines essential narcotic drug, as per which, essential narcotic drug means a narcotic drug which has been notified by Central Government for medical and scientific use. In the table provided under the Rule 52A(3) of the NDPS Rules, 1985, the names of essential narcotic drugs have been given and there are five entries in this table. Methyl morphine (commonly known as 'Codeine') and Ethyl morphine and their salts (including Dionine), all dilutions and preparations except those which are compounded with one or more other ingredients and containing not more than 100 milligrammes of the drug per dosage unit and with a concentration of not more than 2.5% in undivided preparations and which have been established in therapeutic practice, has been provided in entry No. 2 of the Table.

39. The commercial quantity of contraband has been defined by Section 2 (viia) as per which it means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette, whereas Section 2(xxiiia) defines small quantity as per which it means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette. In pursuance of these sub- Sections viia and xxiiia of Section 2 of NDPS Act, Central Government had issued a notification in the year, 1996 and thereafter, the same was replaced by notification dated 19.10.2001, specifying the small and commercial quantity of narcotic drugs and psychotropic substances by way of providing a table of such narcotic drugs and psychotropic substances. There were three Notes to this Table. However, on 18.11.2009, Note no. 4 was added, as per which the quantity of the neutral substances of any mixture or other preparations of narcotic drugs or psychotropic substances has to be taken into consideration while determining the "small or commercial" quantity of the Narcotic Drugs or Psychotropic Substances.

40. It was further held by Hon'ble Supreme Court in ***Hira Singh Case (supra)*** that in case of seizure of mixture of narcotic drugs or

psychotropic substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and it has to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the narcotic drugs or psychotropic substances.

41. As such, it clearly emerges from the statutory provisions of the NDPS Act and Rules made thereunder, that even the cough syrup containing codeine with concentration of less than 2.5% of total preparation is controlled and regulated for its possession, sale, purchase, transport, export, import etc. In this regard, Chapter-VA of the NDPS rules, 1985, containing Rules 52A to 52M provide detailed provisions, as it has been discussed above. Hence, the violation of such Rules in regard to Control and Regulation of the Essential Drugs is punishable under the NDPS Act. As such, if someone is found to be in possession of such drugs without authorization, he is liable to be prosecuted under the NDPS Act and not under the Drugs and Cosmetic Act, 1940.

42. The aforesaid view of this Court gets reinforced also in view of the decision of Union of India and Anr. Vs. Sanjeev V. Deshpande, (2014) 13 SCC 1, wherein Hon'ble Supreme Court has held as follows:

> *"25. In other words, DEALING IN narcotic drugs and psychotropic substances is permissible only when such DEALING is for medical purposes or scientific purposes. Further, the mere fact that the DEALING IN narcotic drugs and psychotropic substances is for a medical or scientific purpose does not by itself lift the embargo created under Section 8(c). Such a dealing must be in the manner and extent provided by the provisions of the Act, Rules or Orders made thereunder. Sections 9 and 10 enable the Central and the State Governments respectively to make rules permitting and regulating various aspects (contemplated under Section 8(c), of DEALING IN narcotic drugs and psychotropic substances."*
>
> *(Emphasis supplied)*

43. Hon'ble Apex Court in **Mohd. Sahabuddin and Anr. Vs. State of Assam : (2012) 13 SCC 491**, has again held as follows:

> *"10. It is not in dispute that each 100 ml bottle of Phensedyl cough syrup contained 183.15 to 189.85 mg of codeine phosphate and the each 100 ml bottle of Recodex cough syrup contained 182.73 mg of codeine phosphate. When the appellants were not in a position to explain as to whom the supply was meant either for distribution or for any licensed dealer dealing with pharmaceutical products and in the absence of any other valid explanation for effecting the transportation of such a huge quantity of the cough syrup which contained the narcotic substance of codeine phosphate beyond the prescribed limit, the application for grant of bail cannot be considered based on the above submissions made on behalf of the appellants."*

44. Having considered the rival submissions and upon the perusal of the material brought on record, this Court finds that the allegations pertain to dealing with codeine-based cough syrup in a quantity far exceeding originally retail transactions. The material collected during investigation, prima facie, indicates dealing in a substantial quantity of the contraband substances through a chain in which the applicant is alleged to be a participant. The contentions that the applicant is having a wholesale drug license, and therefore, outside the purview of the NDPS Act cannot be accepted at this stage. The possession of a license by itself does not conclusively establish lawful dealing when the prosecution alleges diversion and misuse of a notified narcotic preparation. Whether the transactions were genuinely done under the Drugs and Cosmetics Act or constituted unlawful diversion is a matter to be examined during trial on the basis of evidence.

45. So far as the contentions of learned counsel for the applicant regarding non-communication of grounds of arrest is concerned, it may

be observed that a distinction exists between mere reason for arrest and the communication of the grounds on which the arrest is founded, as per the law laid down by the Hon'ble Supreme Court in **Mihir Rajesh Shah (supra)**. Learned AGA has drawn the attention of the Court to the arrest memo available on record along with the counter affidavit. A perusal of the said arrest memo reveals that the particulars of the case crime numbers, penal provisions involved, date, time and place of arrest as well as the grounds necessitating arrest have been specifically recorded therein. The arrest memo indicates that the arrest was considered necessary for preventing tampering with evidence, preventing destruction of material relevant to the investigation, preventing intimidation or influence over witnesses and securing the presence of the accused during the course of investigation and trial. The memo further records that the applicant was informed in a language understood by him about the reasons and grounds of his arrest as well as his legal rights. The signature of the applicant along with two witnesses acknowledging the arrest memo and the acknowledgement of the information of arrest by his (wife) family member are also available on record.

It is also noteworthy that the applicant was arrested on 01.02.2026 and has remained in custody thereafter. Despite having sufficient opportunity, the applicant did not challenge the legality of the arrest or the alleged non-communication of the grounds of arrest before the court concerned at the earliest stage nor did he initiate any independent proceedings questioning the validity of his arrest. Although the failure to raise such a challenge at an earlier stage may not, by itself, amount to a waiver of constitutional safeguard, it nevertheless constitutes a relevant stand while assessing the prima facie merit on the contention raised in the present bail application.

At this stage, there is no material on record to prima facie conclude that the grounds of arrest were not communicated to the

applicant. The arrest memo appears to contain not only the statuary particulars relating to arrest, but also the grounds on which the investigating agencies considered the arrest necessary. Whether the communication made was legally sufficient in all respects and whether every procedural safeguard stood fully complied with are matters which may require deeper examination on the basis of evidence and the complete records at an appropriate stage. However, for the purposes of the present bail application, the Court is prima facie satisfied that the requirement of communicating the grounds of arrest cannot be said to have been wholly disregarded so as to persuade this Court to record a finding that the applicant is not guilty of the offence or that he is entitled to bail on this ground alone.

46. As far as the contentions regarding non-compliance of Section 42 of NDPS Act relating to the communication of the grounds of arrest and admissibility of the such statements require detailed examination during trial and at this stage, it does not persuade the Court to record a finding that the applicant is not guilty of the offence.

47. The Hon'ble Supreme Court in the case of **State of Kerala vs. Rajesh, 2020 (12) SCC 122** has held that the limitations under Section 37 of the NDPS Act are in addition to the limitations under the Code of Criminal Procedure and that a liberal approach in matters involving commercial quantity is not warranted. The Hon'ble Supreme Court in **NCB vs. Mohit Agarwal, 2022 (4) SCC 713** has reiterated that before granting bail in cases involving commercial quantity, the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the alleged offense and is not likely to commit any offense while on bail. The Court is also mindful of the law laid down in **Sanjeev V. Deshpande (supra)** and **Md. Sahabuddin (supra),** wherein the Supreme Court emphasized that pharmaceutical preparations containing narcotic substances are not automatically excluded from the purview of the NDPS Act.

48. It is relevant to mention that Codeine-containing syrup is commonly misused as an intoxicating substance for non-medicinal purposes. The aforesaid firm, with the intention of earning excessive profits and obtaining wrongful gain, has misused the drug sale licence granted by the competent authority and has sold codeine-based medicines in violation of the provisions of the Drugs and Cosmetics Act, 1940 and the relevant Rules of 1945. Such sales were made without complying with the prescribed legal formalities relating to medical prescriptions and records, thereby facilitating the use of these medicines as intoxicants in the market. The said firm has committed the offence of selling codeine-containing medicines without maintaining the requisite sale records and statutory documentation.

49. The sale of codeine containing cough syrup without a prescription not only violates regulatory requirement but also facilitates its easy accessibility and potential misuse, particularly among young individuals. Unrestricted availability increases the risk of addiction, dependence, respiratory complications and other serious health consequences.

Therefore, strict compliance with prescription requirement, vigilant monitoring by drug authorities, and responsible dispensary practices are essential to prevent abuse and protect public health.

50. Considering the nature of accusation, quantity involved, the material collected during investigation, the allegations regarding diversion of codeine-based cough syrup and the twin conditions contained in Section 37 of the NDPS Act, this Court is unable to record its satisfaction that there are reasonable grounds for believing that the applicant is not guilty of the offenses. Likewise, at this stage, the second condition contained under Section 37 of the NDPS Act also remains unsatisfactory.

51. In view of the foregoing discussion and without expressing any opinion on the merits of the case, this Court does not find it a fit case for grant of bail to the applicant.

52. Accordingly, the bail application is **rejected**.

53. It is, however, clarified that the observations made herein-above are confined to the present bail application and shall have no bearing on the merits of the trial.

(Rajeev Bharti,J.)

June 08, 2026
Shravan

Digitally signed by :-
SHRAVAN KUMAR
High Court of Judicature at Allahabad,
Lucknow Bench