

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24222 of 2025

Arising Out of PS. Case No.-950 Year-2024 Thana- Excise P.S. District- Kaimur (Bhabua)

1. Vikram Vishwas, Male, aged about years, Son of Vijay Vishwas, Resident of Village - Adityapur, P.S.- Krishnganj, District - Nadiya (W.B.).
2. Shahabul Sheikh, Male, aged about years, Son of Akash Sheikh, Resident of Village - Janirampur Colony, P.S.- Sagarpada, District - Murshidabad (W.B.).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Uday Pratap Singh, Advocate
For the Opposite Party/s : Mr. Prem Kumar Jha, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL ORDER

3 05-05-2025 Heard learned counsel for the petitioners and

learned APP for the State.

2. The petitioners seek bail in connection with Bhabua Excise P.S. Case No. 950 of 2024 registered for the offences punishable under Sections 8(c), 21 (c) and 29 of the N.D.P.S. Act.

3. As per the prosecution case, total 179.80 liters in eight plastic gunny bags codeine based phensedyl cough syrup was recovered from the petitioners.

4. Learned counsel for the petitioners submits that petitioners are innocent have committed no offence and have falsely been implicated in this case. He submits that there is no any independent witnesses of the occurrence except the



police party. He further submits that petitioner no. 1 is the Driver and petitioner no. 2 is Khalasi in this case. He next submits that there is no any sign of the petitioners on the seizure list. He lastly submits that there is no any recovery of any articles seized from the conscious possession of the petitioners. Petitioners have got clean antecedent as stated in para 3 of the petition is in custody since 18.12.2024.

5. Learned APP for the State have vehemently opposes the instant bail petition and submitted that the judgment of ***Hira Singh vs UOI SCC On Line SC 382*** in which Supreme Court has stated that neutral substance is required to be considered while determining small quantity or commercial quantity and hence the prayer of bail shall be rejected.

6. Learned APP has further submitted that there is direct recovery of 179.80 liters in eight plastic gunny bags of codeine based phensedyl cough syrup which is more than commercial quantity under NDPS Act and petitioners does not deserve bail.

7. In ***Hira Singh (supra)***, the three Judge Bench of the Hon'ble Supreme Court had held thus:-

“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 to be taken into consideration along with actual content by weight of the offending drug, while determining the “small or commercial quantity of Narcotic Drugs or Psychotropic Substances.

8. The Hon’ble Supreme Court in ***Intelligence Officer, Thiruvananthapuram vs. Naushad K.K. & Ors. (2022)Livlaw (SC)978) Cr. App. No. 1726 of 2019*** reiterated that neutral substance quantity cannot be ignored while labelling the quantity of contraband recovered on ‘small quantity’ or ‘commercial quantity’.”There is no cavil to the issue that the judicial pronouncement now settles the issue in “***Hira Singh & Anr. vs. Union of India & Anr.***” reported as ***2020 SCC online SC 382*** opining that the decision of this Court relied upon in impugned order “***E. Micheal Raj vs. Patna High Court CR. MISC. No.18873 of 2024(2) dt.21-03-20244/5Intelligence Officer, Narcotic Control Bureau (2008) 5 SCC 161***” is no more good law and in determining as to what is the quantity, the neutral substance quantity is not be ignored”.

9. In view of the gravity of the consequences of drug trafficking, the offences under the NDPS Act have been made cognizable and non-bailable. To prevent the devastating impact on the people of nation, parliament in its wisdom deemed it fit to introduce stringent conditions for grant of bail



under the Act.

10. On perusal of FIR and impugned order dated 18.02.2025, it appears that on the basis of written report of the informant namely Linkan Kumar, Excise Sub-Inspector, Mohania, FIR has been lodged under Sections 8(c), 21 (c) and 29 of the N.D.P.S. Act against three accused persons including the present petitioners. It appears that total 179.80 liters of codeine based phensedyl cough syrup has been recovered in eight plastic gunny bags. It also appears that codeine based phensedyl cough syrup is more than commercial quantity.

11. Considering the facts and circumstances and submissions made on behalf of the petitioners, the quantity of codeine based phensedyl cough syrup seized from the petitioners comes under the commercial quantity, I am not inclined to grant bail to the petitioners.

12. Accordingly, the prayer for bail of the petitioners are hereby rejected.

(Ramesh Chand Malviya, J)

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