

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25621 of 2025

Arising Out of PS. Case No.-20 Year-2025 Thana- BAHADURPUR District- Darbhanga

Rohit Kumar Son of Umesh Paswan Resident of Village - Purkhopatti, P.S. -
Bahadurpur, District - Darbhanga

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ugranath Mallik, Advocate

For the Opposite Party/s : Mr. Jagdhar Prasad, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL ORDER

2 05-05-2025 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner is in custody in a case in connection with Bahadurpur P.S. Case No. 20 of 2025 registered for the offences punishable under Sections 21(C) of the N.D.P.S. Act.

3. As per allegation in the FIR, the informant, who is Sub Inspector of Police, posted at Bahadurpur PS on 14.01.2025 went on night patrolling and while reaching at Chatti Chowk, she saw three persons were coming on a motorcycle and while seeing the police party they were trying to flee away from there but they were being caught with the help of police officials and after searching 82 bottles of Onrex cough syrup each containing 100ml kept whose quantity was 8.2 litres were recovered from three white colour polythene from the possession of the petitioner and other co-accused persons.

4. Learned counsel for the petitioner submits that



petitioner is innocent and has committed no offence and has falsely been implicated in this case. He further submits that recovered medicine is higher than small quantity but lower than commercial quantity. He next submits that there is no any recovery of any articles seized from the physical possession of the petitioner. Petitioner has got clean antecedent as stated in para-3 of the bail petition. Petitioner is in custody since 14.01.2025.

5. Learned APP for the State has 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 codeine based 82 bottles of Onrex cough syrup each containing 100ml kept whose quantity was 8.2 litres were recovered and on the cap of each bottle WINGS Codeine phosphate & Triprolidine Hydrochloride Syrup was written with its manufacturer and batch number.

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.*** (2022Livelaw (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 N.D.P.S 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 27.02.2025. It appears that total codeine based 82 bottles of Onrex cough syrup each containing 100ml kept whose quantity was 8.2 litres were recovered and on the cap of each bottle WINGS Codeine phosphate & Triprolidine Hydrochloride Syrup was written with its manufacturer and batch number. It also appears that codeine based Onrex cough syrup is more than commercial quantity.

11. Considering the facts and circumstances of the case and submissions made on behalf of the petitioner, the quantity of codeine based Onrex cough syrup seized from the petitioner comes more than the commercial quantity. I am not inclined to grant bail to the petitioner.

12. Accordingly, the prayer for bail of the petitioner is hereby rejected.

(Ramesh Chand Malviya, J)

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