

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24887 of 2025

Arising Out of PS. Case No.-2 Year-2024 Thana- Mufassil District- Purnia

Diwakar Jaiswal @ Diwakar Jayswal S/O Ratan Mohan Bhagat R/O
Village- Tatma Toli Suddin Chowk Chhath Pokhar, P.S- Sahayak
Khazanchi, Distt-- Purnea.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr.N.K. Agrawal, Sr. Advocate Mr.Ram Prawesh Kumar, Advocate Ms.Diksha Kumari, Advocate
For the Opposite Party/s :		Mr.Bhanu Pratap Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 18-09-2025 Heard Mr. N.K. Agrawal, learned senior
counsel appearing on behalf of the petitioner and
learned A.P.P. for the State.

2. The accused/petitioner seeks bail in
connection with Muffasil P.S. Case No. 02 of 2024
registered for the offences under Sections 8(c),
21(c), 25, 29 of the Narcotic Drugs and
Psychotropic Substances Act, 1985 (in short the
“N.D.P.S. Act”).

3. The accused/petitioner is not named in
the First Information Report and is in custody since
07.03.2025.



4. Allegation against the petitioner is to have in possession of 80 liters of codeine phosphate & Triprolidine Hydrochloride cough syrup, which is the narcotic substance and prohibited drugs under the N.D.P.S. Act.

5. Mr. N.K. Agrawal, learned senior counsel appearing for the petitioner submitted that recovery of alleged cough syrup not appears to be made from conscious physical possession of this petitioner. It is submitted that all the seized cough syrup appears to be manufactured by reputed pharmaceutical company, where nothing appears surfaced during investigation to suggest that petitioner was aware about scientific composition of cough syrup, having one of the composition **“Codeine”** as to invite the culpable mental state of petitioner in view of section 35 of the N.D.P.S. Act.

6. It is submitted by Mr. Agrawal, that *prima facie* in absence of culpable mental state, the rigour of section 37 of N.D.P.S. Act not appears to be applicable in the present factual scenario.



7. Arguing further, Mr. Agrawal submitted that in the present matter charge-sheet was submitted without obtaining FSL report as just to defeat the statutory right of default bail of petitioner in view of section 167(2) of Cr.P.C. and, therefore, in view **Divyas Bardewa Vs. Narcotics Control Bureau [Special Leave to Appeal (Cri.) No(s). 11628/2022]**; which is pending for larger consideration before the Hon'ble Apex Court, this petitioner deserves bail.

8. While concluding argument, it is submitted that petitioner found involved in three more excise cases, where he is on bail.

9. Learned A.P.P. for the State has opposed the prayer for bail of the petitioner.

10. In view of aforesaid factual submission and by taking note of the fact as charge-sheet in this matter appears submitted without obtaining FSL report, coupled with the fact that petitioner remains in custody since 07.03.2025, accordingly, in view of **Divyas Bardewa's case (supra)**, above-named petitioner is directed to be released



on bail subject to outcome of the **Divyas Bardewa’s case (supra)**, furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Special Judge (N.D.P.S. Act), Purnea/concerned court, in connection with Muffasil P.S. Case No. 02 of 2024, subject to the condition as laid down under Section 437(3) Cr.P.C/Section 480(3) of the Bhartiya Nagarik Suraksha Sanhita (in short “B.N.S.S.”).

(Chandra Shekhar Jha, J)

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