

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32593 of 2025

Arising Out of PS. Case No.-659 Year-2024 Thana- KATIHAR NAGAR District- Katihar

Md. Arman Ansari @ Arman Ansari, S/O Md. Ibrahim Ansari, R/O Vill.-
Sharifganj, Ward No. 41, P.S.- Sahayak(Katihar), Dist.- Katihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. N.K. Agrawal, Sr. Advocate. Mr. Pawan Kumar Singh, Advocate. Ms. Diksha Kumari, Advocate
For the State	:	Md. Aslam Ansari, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 09-09-2025

Introduction

The present Criminal Miscellaneous Petition has been filed by the Petitioner under Section 482 B.N.S.S. for anticipatory bail in connection with N.D.P.S. Case No. 61 of 2024 in the Court of learned Sessions Judge, Katihar arising out of Town Katihar (Sahayak) P.S. Case No. 659 of 2024, registered for the offences punishable under Sections 21(c), 22(c) and 25 of the N.D.P.S., Act, 1985 against the Petitioner and co-accused, Mahboob Alam.

Prosecution Case

2. The prosecution case as emerging from the written report of Assistant Officer Incharge of Sahayak Police Station,



Katihar is that on 09.09.2024, the Informant/Police Officer got secret information at about 10:05 O'clock that the co-accused, Mahboob Alam @ Lal Khan is selling codeine syrup and intoxicant medicine and he has concealed such contraband in the house of Arman Ansari and also in the bush nearby his house. He sells that contraband after taking out from that place of storage. Hence, Sanha No. 246 of 2024 was lodged on 09.09.2024 and the Superintendent of Police was accordingly informed by Memo No. 2102 of 2024 dated 09.09.2024 for further proceeding and constituting a team. Hence, after getting instruction from the superior officers, the Informant along with other police officers proceeded to the place of storage of the contraband and when the team reached near the house of the Petitioner, one person came out of the house and seeing the police, he started fleeing away. The house of the Petitioner was searched and two bags were recovered, one bag was containing **400 bottles of cough syrup of 100 ml. each** and as per description on the bottle, the cough syrup contains "**Codeine Phosphate & Triprolidine Hydrochloride Syrup WISCOF DX**" containing codeine. The other bag was containing **300 Nitracross Tablets**. Further four containers were also recovered from his house containing **850 Nitracross Tablets**. When the



police further proceeded to the place of *bansfiti*, one person was seen to be fleeing away from the bush and after search of the bush, three bags were recovered and every bag was containing **200 bottles of cough syrup of 100 ml. each containing “Codeine Phosphate & Triprolidine Hydrochloride Syrup WISCOF DX”** and one bag was containing **1440 Pyeevon Spas Plus Tablet.**

**Rejection of Anticipatory Bail Petition of the Petitioner
by the Court of Sessions, Katihar**

3. Prior to moving this Court, the Petitioner had preferred anticipatory bail petition before the Sessions Judge, Katihar. However, the anticipatory bail application of the Petitioner was rejected by learned Sessions Judge holding as follows:

“Perused the record, it transpires that on search of Arman Ansari’s house, 400 bottle codeine cough syrup, 1150 tablets of pyeevan spasplus was recovered and 100 bottle codeine cough syrup and 1440 tablet of payeevan spasplus was recovered from the place where Lal Khan @ Mahboob Alam was hiding. Charge Sheet has been submitted against the Petitioner in this case.

In view of the aforesaid facts, this is not a fit case for grant of privilege of anticipatory bail to the Petitioner. Accordingly, the prayer for anticipatory bail of the Petitioner is hereby rejected”

4. I heard learned counsel for the petitioner and learned APP for the State.



Submission on behalf of the Petitioner

5. Learned counsel for the Petitioner submits that the Petitioner is innocent and has falsely been implicated in this case. He also submits that the prosecution against the Petitioner is vitiated in view of the non-compliance of the mandatory provisions of Section 42 of the N.D.P.S., Act at the time of making search and seizure.

6. He further submits that cough syrup with codeine is not a narcotic drug and hence, the petitioner cannot be prosecuted under the NDPS Act. At most, the Drugs and Cosmetics Act, 1940 read with Rules made thereunder may be applied against the petitioner. Here, he refers to and relies upon **Vibhor Rana v. Union of India, 2021 SCC OnLine All 908.**

7. He also submits that the content of narcotic drugs and psychotropic substances may be taken into consideration, excluding the quantity of the neutral substance to determine the quantity of the alleged contraband for application of rigors of Section 37 of the NDPS Act.

8. Learned counsel for the Petitioner also submits that the Petitioner has no criminal antecedents.

Submission on behalf of the State

9. However, learned APP for the State submits that



there is recovery of 400 bottles of cough syrup of 100 ml each, containing codeine phosphate, Triprolidine Hydrochloride and 1150 Nitracross Tablets containing Nitrazepam from the house of the petitioner and three bags containing 200 bottles of cough syrup containing codeine and 1440 Pyeevon Spas Plus Tablet containing Tramadol were recovered from the bush. Hence, rigors of Section 37 of the N.D.P.S., Act comes into play and the Petitioner is not entitled to get anticipatory bail, in view of the material in support of the prosecution case.

10. He further submits that as per the provisions of Drugs and Cosmetics Act, 1940 read with N.D.P.S. Act, 1985, the possession of cough syrup containing codeine or any medicines containing narcotic substances like Nitrazepam or Tramadol without documents showing authorization of such possession, is punishable under the NDPS Act and this is not the case of the Petitioner that he has any documents like license or permit to show authorized possession of the seized contraband.

11. He also submits that the quantity of the neutral substance 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 and psychotropic substances.



12. He further submits that in view of the facts and circumstances of the case and Section 37 of the NDPS Act, the petitioner is not entitled to get anticipatory bail.

Legal Provisions

13. Before I consider the rival submissions of the parties, it is imperative to discuss the relevant statutory provisions and binding judicial precedents.

14. The Drugs and Cosmetics Act, 1940 deals with the drugs which are intended to be used for therapeutic or medical purposes, as is clear from the definition of “**Drug**” as per **Section 3(b) of the Drugs and Cosmetics Act, 1940**, which reads as follows:

“ 3(b). “drug” includes—

(i)all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

(ii)such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette;

(iii)all substances intended for use as components of a drug including empty gelatin capsules; and

(iv)such devices intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette, after consultation with the Board.”



15. The Drugs and Cosmetics Act intends to maintain high standard of drugs and medical treatment. It also prevents adulteration of drugs and the production, manufacture, distribution and sale of spurious and sub-standard drugs. Hence, as per the scheme, the Drugs and Cosmetics Act, along with the Rules made thereunder, controls and regulates the manufacture, sale and distribution as well as import of drugs and cosmetics by way of making provisions for license, permit and authorization.

16. Some drugs on account of their nature have been classified as “prescription drugs” and they are not allowed to be sold by retail without prescription of registered medical practitioners. Schedule H-1, as provided under Rules 65 and 97 of the Drugs Rules, 1945, is one of such schedules, which contains such prescription drugs. This table contains 48 names of the prescription drugs and as per the **Note** to it, the preparation containing such drugs, substances and their salts are also covered by this schedule. Some of the drugs mentioned in this table are narcotic drugs and psychotropic substances like **Codeine** (Sl. No.20), **Nitrazepam** (Sl. No.36) and **Tramadol** (Sl. No.45), etc.

17. As such, the Drugs and Cosmetics Act, 1940 deals



with drugs in general. However, the NDPS Act, 1985 deals with Particular drugs - Narcotic drugs and Psychotropic substances, used for intoxication and getting stimulant effects. It has been enacted in addition to and not in derogation of Drugs and Cosmetics Act, 1940 or the Rules made thereunder. Hence, the NDPS Act should not be read in exclusion of the Drugs and Cosmetics Act, 1940. Refer to **Section 80 of the N.D.P.S., 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.”

18. The NDPS Act and the Rules made thereunder intend to curb and penalize the use of narcotic drugs and psychotropic substances, by way of controlling and regulating the operations relating to narcotic drugs and psychotropic substances.

19. Chapter-III of the NDPS Act, 1985, containing Sections 8 to 14, deals with prohibition, control and regulation of Narcotic Drugs and Psychotropic substances. **Section 8** prohibits certain operations. It reads as follows:-

“8. Prohibition of certain operations.- No person shall-

(a) cultivate any coca plant or gather any portion of coca plant; or



(b) cultivate the opium poppy or any cannabis plant;
or

(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)

20. As per **Section 9 of the NDPS Act**, Central Government is empowered to permit, control and regulate certain operations, subject to Section 8 of the NDPS Act. **Section 9A** further confers power upon Central Government to control and regulate controlled substances. **Section 10** of the Act empowers the State Government to permit, control and regulate certain operations, subject to the provisions of Section 8 of the Act.

21. In exercise of the powers conferred by **Section 9**



read with Section 76 of NDPS Act, Central Government has made **NDPS Rules, 1985**. In the year, 2015, **Chapter VA** has been added to the Rules dealing with possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of **essential narcotic drug**.

Meaning of Narcotic drugs and Psychotropic substances.

22. The word “**narcotic drugs**” has been defined by Section 2(xiv), as per which it means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs. “**Cannabis (hemp)**” as per Section 2(iii) of the NDPS Act, means **charas, ganja** and any mixture or any of the above forms of cannabis or any drink prepared therefrom.

23. “Opium” has been defined by Section 2(xv), which reads as follows:

“ **2(xv). "opium" means—**
(a)the coagulated juice of the opium poppy; and
(b)any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent. of morphine.”

24. “Poppy Straw” has been defined by Section 2(xviii) of the NDPS Act, which reads as follows:

“2(xviii). "poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom.”



25. “Manufactured drug” has been defined under **Section 2(xi) of the NDPS Act**, which 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;”

26. “Coca derivative” has been defined by **Section 2(v) of the NDPS Act**, which reads as follows:

“2(v). "coca derivative” means—(a)crude cocaine, that is, any extract of coca leaf which can be used, directly or indirectly, for the manufacture of cocaine;

(b)**ecgonine** and all the derivatives of ecgonine from which it can be recovered;

(c)**cocaine**, that is, methyl ester of benzoyl-ecgonine and its salts; and

(d)**all preparations** containing more than 0.1 per cent. of cocaine.”

27. “Medicinal cannabis” as per **Section 2(xii) of NDPS Act**, means any extract or tincture of cannabis(hemp).

28. “Opium derivative” has been defined by **Section 2(xvi)** which means medicinal opium, prepared opium, phenanthrene alkaloids, namely, morphine, **codeine**, thebaine and their salts, diacetylmorphine and all preparations containing



more than 0.2 percent of morphine or containing any diacetylmorphine.

29. “Poppy straw concentrate” has been defined by Section 2(xix) of NDPS Act, which reads as follows:

“ 2(xix). "poppy straw concentrate" means the material arising when poppy straw has entered into a process for the concentration of its alkaloids.”

30. “Preparation” has been defined by Section 2(xx) of NDPS Act, which reads as follows:

“2(xx) "preparation", in relation to a narcotic drug or psychotropic substance, means any one or more such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more such drugs or substances.”

31. As such codeine, morphine, thebaine and their salts comes under the category of **narcotics drugs**.

32. “Psychotropic substance” has been defined by Section 2(xxiii) of NDPS Act, as per which psychotropic substance means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the **Schedule to the NDPS Act, 1985**. Here, **Nitrazepam** figures at the entry No.64, whereas **Tramadol** figures at the entry No.110y by way of addition in the year of 2018. As per entry No.111 in the Schedule, salts and preparation of the psychotropic substances as mentioned in the table are also



classified as psychotropic substances.

Offences and Penalties under the NDPS Act

33. Chapter-IV, containing Sections 15 to 40, deals with offences and penalties. **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)

34. Section 22 of the NDPS Act provides for punishment for contravention in relation to psychotropic substances. It reads as follows:-



“22. Punishment for contravention in relation to psychotropic substances.—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 psychotropic substance shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to 5[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)

Narcotic Drugs and Psychotropic Substances Rules, 1985

35. In exercise of powers conferred by Section 9 read with Section 76 of the NDPS Act, 1985, the Central Government has made the NDPS Rules, 1985 to give effect to the provisions of the Act.

36. Chapter III of the Rules deals with opium, poppy, cultivation and production of opium and poppy straw. **Chapter IIIA** deals with possession, transport, import inter-State, export inter-State, warehousing, sale purchase, consumption and use of poppy straw produced from opium



poppy from which no juice has been extracted through lancing.

Chapter IV deals with manufacture, sale and export of opium.

Chapter V deals with manufactured drugs.

37. Chapter VA, which has been added in the year, 2015, deals with possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of essential narcotic drugs.

38. Chapter VB deals with special provisions relating to recognized medical institutions. **Chapter VI** deals with import, export and transshipment of narcotic drugs and psychotropic substances.

39. Chapter VII deals with psychotropic substances and as per this Chapter, the Drugs Rules, 1945 has been directly made applicable in case of psychotropic substance as far as their manufacture, sale, purchase, possession, consumption or use is concerned for their control and regulation.

40. Chapter VIIA deals with special provisions regarding manufacture, possession, transport, import-export, purchase and consumption of narcotic drugs and psychotropic substances for medical, scientific and training purposes. **Chapter VIIB** deals with reports, returns and estimates under international conventions.



41. Schedule 1 is appended to the Rules as provided under Rules 53 and 64. It has two parts. **Part I** contains the names of narcotic drugs, whereas **Part II** provides the names of psychotropic substances.

42. From the perusal of the Rules, it clearly transpires that manufacture, sale, purchase, possession, transport, import and export of narcotic drugs and psychotropic substances are regulated and controlled by way of license, permit or authorization. For want of such license, permit or authorization, any operations or possession of narcotic drugs and psychotropic substances are punishable under the NDPS Act.

43. Even the essential narcotic drugs is controlled and regulated by **Chapter VA** which has been added to the Rules in the year, 2015. As per **Rule 52A(3)**, even 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, as appended to this Rule. The Table reads as follows :



Sl. No.	Name of the essential Narcotic Drug	Quantity
(1)	(2)	(3)
1.	Morphine and its salts and all preparations containing more than 0.2 per cent. of Morphine	500 Milligrammes
2.	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	2000 Milligrammes
3.	Dihydroxy Codeinone (commonly known as Oxy-codone andDihydroxycodeinone), its salts (such as Eucodal Boncodal DinarconHydrolaudin, Nucodan, Percodan, Scophedal, Tebodol and the like),its esters and the salts of its ester and preparation, admixture,extracts or other substances containing any of these drugs	250 Milligrammes
4.	Dihydrocodeinone (commonly known as Hydrocodone), its salts(such as Dicodide, Codinovo, Diconone, Hycodan, Multacodin,Nyodide, Ydroced and the like) and its esters and salts of its ester, and preparation, admixture, extracts or other substances containing any of these drugs	320 Milligrammes
5.	1-phenethyl-4-N-propionylanilino-piperidine (theinternational-non-proprietary name of which is Fentanyl) and its salts and preparations, admixture, extracts or	Two transdermal patches one each of 12.5 microgram per



	other substances containing any of these drugs	hour and 25 microgram per hour:
--	--	---------------------------------

44. Here, it is noteworthy in regard to codeine and Ethyl Morphine as provided in entry No. 2 of the Table, that all dilutions and preparations compounded with one or more ingredients and containing not more than 100 milligrams drugs per dosage unit and with a concentration of not more than 2.5 % in undivided preparations are exceptions under this Rule. However, it does not mean that such narcotic drugs with codeine or morphine with concentration of less than 2.5 % in undivided preparations are beyond the mischief of the NDPS Act. It only means that Section 8(c) of the NDPS Act would be read with the Drugs Rules, 1945 made under the Drugs Act for control and regulations of the manufacture, sale, purchase, possession, transport, import and export of such drugs to the extent there is no specific provision in the NDPS Rules to the contrary. As such, in such situations, if an accused has no license, permit or authorization in terms of the Drugs Act, 1940 and Rules made thereunder, the accused would be liable to be punished under the NDPS Act, in view of Section 8(c) of the NDPS Act, 1985, containing general prohibition of certain operations in regard to narcotic drugs or psychotropic substances. There is no



contemplation under the NDPS Act for framing of Rules for prohibiting the various activities of dealing in narcotic drugs or psychotropic substances. Such prohibition is already contained in Section 8(c) of the NDPS Act. The Rules under the NDPS Act are contemplated for permitting and regulating activities of dealing in narcotic drugs or psychotropic substances.

45. Moreover, mere dealing in narcotic drugs and psychotropic substances for medicinal or scientific purposes does not by itself lift the embargo created under Section 8(c) of the N.D.P.S. Act. Such dealing must be in the manner and the extent provided by rules or orders made thereunder. Here, one may refer to **Union of India v. Sanjeev V. Deshpande, (2014) 13 SCC 1**. The relevant parts of the judgment read 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.

26. The Act does not contemplate framing of rules for prohibiting the various activities of DEALING IN narcotic drugs and psychotropic substances. Such prohibition is already contained in Section 8(c). It only contemplates of the framing of Rules for permitting and regulating any activity of DEALING IN narcotic drugs or



psychotropic substances.”

(Emphasis supplied)

46. 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.”

(Emphasis supplied)

47. In **Vibhor Rana v. Union of India, 2021 SCC OnLine All 908**, Allahabad High Court has held that cough syrup containing codeine with concentration of less than 2.5 per cent is not a narcotic manufactured drug and it does not come within the mischief of NDPS Act and the Rules made thereunder and hence, the accused cannot be punished under the NDPS Act for possession of such cough syrup.

48. In **Vibhor Rana case** (supra), the letter of Drugs Controller General of India has been relied upon by Allahabad High Court, amongst other things, to the effect that such cough syrup does not fall under the provision of NDPS Act and the



Rules made thereunder. But as per definition of Narcotic Drugs and Manufactured Drugs, as it has been already discussed above, any preparation containing codeine which is a opium derivative, comes under the definition of Narcotic Manufactured Drugs. Hence, in my considered opinion, the Letter of Drugs Controller of Indian has been issued contrary to the provisions of the NDPS Act, and hence, it has no legal value.

49. However, any preparation with Codeine or Ethyl Morphine with concentration of less than 2.5% is not covered by the Rule 52A(3) of the NDPS Rules, 1985. They have been provided as an exception in the Table appended to the Rule 52A(3). But, it does not mean that any cough syrup containing codeine with a concentration of less than 2.5% in undivided preparation is beyond the mischief of NDPS Act, for want of specific provisions in the NDPS Rules, 1985 in this regard. Here, the Drugs Rules, 1945 made under the Drugs Act, 1940 would come into play and the manufacture, sale, purchase and possession etc. of such drugs without any license, permit or authorization in terms of the Drugs Rules, 1945 would be punishable under the NDPS Act by virtue of Section 8(c) of the NDPS Act read with the Drugs Rules, 1945.

50. Even Delhi High Court in **Mohd. Ahsan Vs.**



Customs, 2022 SCC OnLine Del 2910 and Jammu and Kashmir High Court in **Azhar Javad Rather Vs. UT of J and K, AIR OnLine 2023 J & K 270** have differed with the view of Allahabad High Court as expressed in **Vibhor Rana Case (supra)** and found the possession of cough syrup containing codeine even with concentration of less than 2.5% in undivided prepration punishable under the NDPS Act, if the accused does not have any licence, permit or authorisation for possession of the recovered cough syrup.

**Commercial/Small Quantity of the Contraband
Determination**

51. Quantum of punishment under the NDPS Act varies according to quantity of the contraband seized from the accused. Hence, question regarding determination of quantity of the contraband always arises in NDPS cases. However, question regarding determination of quantum of the contraband under the NDPS Act is answered and the legal position in this regard is settled by Hon'ble Apex Court in **Hira Singh v. Union of India**, as reported in **(2020) 20 SCC 272**.

52. Coming to the statutory provisions as provided under the NDPS Act, 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(xxiii)** 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.

53. In pursuance of Sub-Sections viia and xxiii 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.

54. This addition of Note 4 was made subsequent to judgment of Hon’ble Supreme Court in **E. Micheal Raj vs. Narcotic Control Bureau** as reported in **(2008) 5 SCC 161**, in which Hon’ble Supreme Court has taken view that when any narcotic drug or psychotropic substance is found mixed with



one or more neutral substance(s), for the purpose of imposition of punishment it is the content of the narcotic drug or psychotropic substance which shall be taken into consideration.

55. The notification dated 18.11.2009 adding Note 4 to the notification dated 19.10.2001, was challenged. However, Hon'ble Full Bench of Supreme Court in **Hira Singh case** (supra) held that the notification is not ultra vires to the Scheme, Rules and provisions of the NDPS Act, and hence, the writ petitions challenging the notification was dismissed. 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.

Meaning and Import of Section 37 of the NDPS Act

56. Section 37 of the NDPS Act read as follows :

"37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and



also for offences involving commercial quantity shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

57. As such, as per Section 37 of the NDPS Act, not only Public Prosecutor is required to be heard at the time of consideration of the bail petition of the accused, even twin conditions as provided in Section 37 of the NDPS Act have to be fulfilled to grant bail to the accused. Moreover, these conditions are cumulative and not alternative ones. Here, negation of bail is a rule and grant of it is an exception.

58. The twin conditions as provided in Section 37 of the NDPS Act are as follows: (a) The satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence, and that (b) He is not likely to commit any offence while on bail. Such view clearly emerges from the following judicial precedents. In **State of M.P. Vs. Kajad, 2001 7 SCC 673**, Hon’ble Apex Court has follows, considering the scope of Section 37 of the N.D.P.S., Act in the light of the scheme of the act.



“5. ... A perusal of Section 37 of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.”

(Emphasis supplied)

59. Similarly, in Narcotics Control Bureau Vs. Mohit Aggarwal, (2022) 18 SCC 374, Hon’ble Supreme Court
has again held as follows:

“11. It is evident from a plain reading of the non obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that : (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the court must be satisfied that the accused person is unlikely to commit any offence while on bail.

.....



15. We may clarify that at the stage of examining an application for bail in the context of Section 37 of the Act, the court is not required to record a finding that the accused person is not guilty. The court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

.....
19. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. 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 considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

(Emphasis supplied)

60. In a recent judgment of **Narcotics Control Bureau Vs. Kashif, (2024) 11 SCC 372**, Hon’ble Supreme Court has again held as follows:

“9. There has been consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused shall generally be not released on bail. Negation of bail is the rule and its grant is an exception. While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of finding as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act.
10. Apart from granting the opportunity of hearing to the Public Prosecutor, the other two conditions i.e. (i)



the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence, and that (ii) he is not likely to commit any offence while on bail, are the cumulative and not alternative conditions.”

(Emphasis supplied)

61. In **Mohd. Muslim v. State (NCT of Delhi)**, as reported in **(2023) 18 SCC 166**, Hon’ble Apex Court has discussed not only the meaning and import of Section 37 of NDPS Act, but also effect of Section 436-A Cr.PC and Article 21 of the Constitution providing for right to speedy trial to the accused. Here, Hon’ble Supreme Court has held that grant of bail on the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act given the imperative of Section 436-A Cr.PC which is applicable to offences under the Special Acts too, holding as follows :

“16. In the most recent decision, *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the Court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 of the NDPS Act. The Court expressed the opinion that Section 436-A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply.....

19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “*not guilty of such offence*” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a prima facie determination. That places the court’s discretion within a very narrow margin. Given the mandate of the general law on bails (Sections



436, 437 and 439 CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted *reasonably*. Further the classification of offences under the Special Acts (the NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions.

.....
21. A plain and literal interpretation of the conditions under Section 37 (i.e. that court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

22. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this Court have, therefore, emphasised that the satisfaction which courts are expected to record i.e. that the accused may not be guilty, is only prima facie, based on a *reasonable reading*, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Mallik*, (2009) 2 SCC 624. Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436-A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51. Having regard to these factors the Court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

(Emphasis Supplied)



Section 42 of NDPS Act and Grant of Bail

62. Here, it is pertinent to point out that adequate or substantial compliance with Section 42 of the NDPS Act is a question of fact to be decided in each case as held by Hon'ble Apex Court in **Karnail Singh Vs. State of Haryana, (2009) 8 SCC 539**, in para-35 of the judgment. The same view has been taken by Hon'ble Apex Court in **Union of India Vs. Mohd. Nawab Khan (AIR 2021 SC 4476)**, and **Buta Singh Vs. State of Haryana (AIR 2021 SC 1913)**.

63. Hence, violation of Section 42 of the NDPS Act being a question of fact can be decided during the trial only and is not available to the petitioner in a Bail proceeding.

Present Case

64. Coming to the case on hand, I find that **400 bottles of cough syrup** containing **codeine**, which is a **Narcotic drug**, and **850 Nitracross tablets** containing **Nitrazepam**, which is a **psychotropic substance**, have been recovered from the house of the petitioner and there is no case of the Petitioner that he has any license, permit or authorization to possess the Narcotic drug and the psychotropic substance in terms of the NDPS Act or the Drugs Act and the rules made therein. Hence, the Petitioner is liable to be prosecuted under the NDPS Act.



65. Moreover, in view of the Notification of the Central Government dated 02.02.2001, **commercial quantity of codeine is 1kg.,** whereas **commercial quantity of Nitrazepam is 500 gm.** and if the quantity of the seized codeine cough syrup and narcotic Nitracross tablets containing Nitrazepam is taken into consideration with the neutral substance, the seized contraband certainly comes into the category of the commercial quantity in view of the huge amount of cough syrup and Nitracross Tablets recovered from the house of the petitioner.

66. Hence, the rigors of Section 37 of the NDPS Act comes into play. But in view of the alleged facts and circumstances of the case and the materials on record, there are no reasonable grounds to believe that the petitioner is not guilty of the alleged offence. There is also nothing on record to find that the petitioner is unlikely to commit an offence while on bail.

67. Moreover, alleged violation of Section 42 of the NDPS Act being a question of fact, can not be looked into at this stage of bail proceeding. Such question of fact is required to be considered during trial.

68. Considering the aforesaid facts and circumstances, I am not persuaded to enlarge the petitioner on anticipatory bail.



69. Accordingly, the present petition stands rejected.

(Jitendra Kumar, J.)

S.Ali/Shoaib
Chandan/Ravi
Shankar

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12.09.2025
Transmission Date	12.09.2025

