

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35050 of 2025**

Arising Out of PS. Case No.-27 Year-2025 Thana- AKBARNAGAR District- Bhagalpur

Shubham Kashyap S/o- Arun Kumar Gupta @ Arun Prasad Gupta R/o- Tetri
@ Tetari Ps- Naugachhia Dist- Bhagalpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Abhishek Anand, Adv

Ms. Madhuri Kumar, Adv

For the Opposite Party/s : Mr. Suman Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER**

5 02-12-2025 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner has prayed for regular bail in a case registered for the offence punishable under Sections 21 and 22 of the N.D.P.S.

3. The case of the prosecution, in short, is that, all together 480 bottles of cough syrup each containing 100ml having brand name of RJT-SCEN Cough Linctus containing codeine were recovered from a car.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence. Learned counsel for the petitioner has submitted that the petitioner is the driver and owner of the said seized car. It has further been submitted that the seized consignment belongs to one Rahul



Yadav who succeeded in fleeing away seeing the police. It has also been submitted that the petitioner has clean criminal antecedent as stated in para 3 of the bail petition. The petitioner is only the carrier. Moreover, he is languishing in judicial custody since 12.02.2025.

5. Learned counsel for the petitioner has submitted that the Central Government has issued notification No. S.O. 826(E) which is given hereunder:-

“S.O. 826(E). - In exercise of the powers conferred by sub-clause (b) of clause (xi) of section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby declares the following narcotic substances and preparations to be manufactured drugs, namely:-

xxx

35. Methyl morphine (commonly known as 'Codeine') and Ethyle 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 milligrams 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.

xxx”

6. In view of the above notification, if the concentration of codeine is less than 2.5% then the same will



come in the category of manufactured drug and the question of quantity shall not arise.

7. Learned APP appearing for the State has vehemently the application for bail and has submitted that in the case of **Hira Singh and Anr. V. Union of India and Anr.**, the Hon'ble Supreme Court has held that entire non-toxic material which is mixed with the contraband will be considered as the contraband and as such, the quantity which has been recovered from the possession of this petitioner is commercial quantity.

8. In this regard, it is worth mentioning that in view of Section 2(d) of the N.D.P.S. Act, the drug itself is not narcotic drug then there is no jurisdictional basis for the case and the Court would not have a reason to go into the question of quantities. The Central Government has power to issue notifications time to time regarding manufactured drugs.

9. It has also been submitted by learned counsel for the petitioner that the concentration of codeine in RJT-SCEN cough Linctus containing codeine phosphate is less than 2.5%.

10. Having heard learned counsel for the parties and considering the facts and circumstances of the case, this court is inclined to enlarge the petitioner on bail. The above named petitioner is directed to be released on bail in connection with



Akbarnagar P.S. Case No. 27 of 2025 on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge, Bhagalpur/concerned Court below.

11. Accordingly, the application stands allowed.

(Ashok Kumar Pandey, J)

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