

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35581 of 2025

Arising Out of PS. Case No.-21 Year-2025 Thana- GAYA KOTWALI District- Gaya

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Ashish Kumar @ Ashish Kumar Lohani S/o- Sri Ajay Lohani Village-
Chhotaki Nawada Gandhi Chowk Police station- Delha District-Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Nayan, Adv.

For the Opposite Party/s : Mr.Bharat Bhushan, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

3 08-08-2025 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in a case in connection with Kotwali (Gaya) P.S. Case No. 21/2025 dated 17.01.2025 registered for the offence punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, 1356 litres of Wincerex cough syrup and 1272 litres of Onerex cough syrup were recovered from the northern room of the house of one Chandra Mohan Singh. Police apprehended four persons who disclosed their name as Rohit Kumar, Dharmendra Kumar, Mohit Kumar and Sujal Kumar. It is further alleged that huge quantity of physician sample of medicines was also recovered in the western room beside the aforesaid room and when police interrogated about the papers then the apprehended accused



persons could not produce the same and they disclosed that the aforesaid cough syrup belonged to the petitioner, Ashish Kumar. The petitioner and the co-accused persons used to store medicine illegally and sell in the different market.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. It is further submitted that the petitioner is not the owner or transporter of the seized cough syrup. The petitioner has no concern with the alleged recovery. Nothing has been recovered from the conscious possession of the petitioner. The petitioner has no criminal antecedent as stated in para 3 of the bail petition.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner by submitting that the seized contraband belonged to the petitioner. Learned counsel has further submitted that the seized contraband is commercial quantity i.e. 2628 litres of Wincerex and Onerex cough syrup contains the composition of Codeine Phosphate and Triprolidine Hydrochloride. The petitioner had no valid authorization for keeping the same. It is further submitted that this case comes under the NDPS Act and Drugs and Cosmetics Act as per section 80 of the NDPS Act. Learned A.P.P. for the State has relied in the case of **Anarul SK Vs. The State of West Bengal (Special Leave to Appeal (Crl.) No(s). 12621 of 2024.)** in which it is stated by



the Hon'ble Supreme Court that *the grant of anticipatory bail in cases involving Narcotic Drugs and Psychotropic Substances (NDPS) is a very serious issue and it further directed the State to consider as to whether it proposes to file an application for the cancellation of bail granted to the other co-accused who has been granted anticipatory bail.* Learned APP for the State also placed reliance on the judgment in the case of ***Hira Singh and Anr. Vs. Union of India and Anr, (2020)20 Supreme Court Cases 272*** of Hon'ble Apex Court has held that "weight of entire materials/ mixture along with neutral material is to be considered for ascertainment of whether the quantity is "small quantity" or "commercial quantity".

6. As per Section 37 of the N.D.P.S. Act, the two conditions are that the Court should be satisfied with :-

(i) There are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) He is not likely to commit any offence while on bail.

7. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail. The Court is of the opinion that the parameters of bail available under Section 37 of the Act have not satisfied in the facts of the instant case. The Hon'ble Supreme Court in the case of ***Narcotics Control Bureau v. Mohit Aggarwal 2022 SCC OnLine SC 891*** has held that "*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 N.D.P.S. Act.”

8. Considering the aforesaid facts and circumstances of the case as well as the seriousness of allegation against the petitioner, I am of the view that no case for grant of anticipatory bail is made out. The petition is rejected and the petitioner is directed to surrender before the Court below concerned within six weeks from the date of this order and pray for regular bail, the learned Court below may consider his prayer for regular bail on the same day in accordance with law without being prejudiced by this order.

9. The application stands rejected.

(Chandra Prakash Singh, J)

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