

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37593 of 2025

Arising Out of PS. Case No.-395 Year-2024 Thana- BAISI District- Purnia

Md. Kalam S/o- Habibulo @ Habawa Resident of village - Mobaiya Chowk,
P.S. - Baisi, District - Purnea

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Raj Kumar, Adv.

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

**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

ORAL ORDER

4 10-09-2025 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner seeks bail in connection with Special
Case No. 126 of 2025 arising out of Baisi P.S. case No. 395 of
2024 instituted for the offences under Sections 21(c), 25 of the
N.D.P.S. Act, 1985.

3. As per prosecution case, the police has recovered
total 2000 bottles containing 100 ml. Codeine syrup (total 200
liters) were recovered from the shop of the petitioner. It is
alleged that during raid, the petitioner and co-accused Md.
Hamid managed to escape from the place of occurrence.

4. Learned counsel for the petitioner submitted that the
petitioner is innocent and has falsely been implicated in the



present case. Petitioner is in custody since 26.03.2025 and has no criminal antecedent. There is no allegation of tampering of witnesses alleged against the petitioner. No incriminating material has been recovered from the conscious possession of the petitioner. He further submits that the petitioner had given the alleged shop on rent for running the shop to co-accused Md. Hamid and, merely on the basis of suspicion, the petitioner has been implicated in the present false case. Learned counsel for the petitioner submits that the quantity of codeine in 200 liters of cough syrup is 380 grams which is below the commercial quantity. There is no compliance of Sections 42 and 50 of the N.D.P.S. Act. There is also non-compliance of Section 103 of the B.N.S.S.

5. Learned A.P.P. for the State has vehemently opposed the prayer for grant of bail to the petitioner. Learned counsel for the State has filed counter affidavit stating that the quantity of Codeine in the 200 liters of Codeine based cough syrup is 400 gram.

6. Learned counsel for the State further submits that the recovered contraband is above the commercial quantity, hence, there is bar under Section 37 of the N.D.P.S. Act. In this connection, learned counsel for the State has relied upon a case



of Hon'ble Supreme Court since reported in ***(2020) 20 SCC 272 (Hira Singh and another vs. Union of India and another)*** in which the Hon'ble Apex Court held that in case of seizure of mixture of narcotic drugs or psychotropic substance 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 way of offending drug while determining the "small or commercial quantity" of narcotic drugs or psychotropic substance.

7. Considering the aforesaid facts and circumstances of the case and recovery of contraband beyond commercial quantity coupled with embargo under Section 37 of the N.D.P.S. Act, this Court is not inclined to grant bail to the petitioner.

8. The prayer is rejected.

(Rudra Prakash Mishra, J)

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