

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43337 of 2025

Arising Out of PS. Case No.-35 Year-2025 Thana- Haraiya District- East Champaran

Raj Kumar S/o Late Santosh Prasad R/o Ashram Tola, Raxaul, P.S.-
Raxaul(Haraiya), District- East Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Asif Kalim, Adv.

For the Opposite Party/s : Mr.Lalan Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA
ORAL ORDER

3 10-09-2025 Heard learned counsel for the petitioner and learned
APP for the State. .

2. The petitioner seeks bail in connection with Haraiya
P.S. Case No. 35 of 2025 / N.D.P.S. G.R. Case No. 48 of 2025
instituted for the offences under Sections 21(c), 23(c) and 29 of
the Narcotic Drugs and Psychotropic Substances Act.

3. As per prosecution case, the police apprehended two
persons including the petitioner and recovered 54 bottles of 100
ml each Onrex Cough Syrup and the Drug Inspector reported
that the seized Cough Syrup comes under the provision of
N.D.P.S. Act.

4. Learned counsel for the petitioner submits that the
petitioner is innocent and has committed no offence as alleged
against him and has falsely been implicated in the present case.
He further submits that the seizure list does not bear the



signature of any independent witness. The petitioner has no concern with the seized bag containing cough syrup. The petitioner has never indulged in such type of offence and has never been made accused in any criminal case. He further submits that nothing incriminating has been recovered from the conscious possession of the petitioner. The petitioner has no concern with the alleged occurrence. The petitioner has no criminal antecedent and is languishing in judicial custody since 09.04.2025 without any rhymes or reason. The quantity of recovered contraband is below the commercial quantity and, hence, Section 37 of the N.D.P.S. Act is not applicable in the present case. 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. On the other hand, 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 in Cr. Misc. No. 39967 of 2025, stating therein that the seized 54 bottles (100 ml each), total 5400 ml would collectively contain approximately 5,214.24 mg of Codeine Phosphate, which falls within the definition of contraband substance under the provisions of the NDPS Act.



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. Learned A.P.P. has further relied upon a case of Hon'ble Supreme Court since reported in *(2020) 20 SCC 272 (Hira Singh and Another versus 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. Accordingly, the prayer for bail of the petitioner is rejected at this stage.

(Rudra Prakash Mishra, J)

rishi/-

U		T	
---	--	---	--

