IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11353 of 2025

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Shreeram Kumar (Proprietor of M/s. S.R. Traders), Son of Shree Manoj Singh, Resident of Village- Hilkhor, Police Station- Atri, Birnoi, District- Gaya.

... ... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Bihar, Patna, P.S.- Secretariat (Patna), Dist- Patna
2. The Additional Drug Controller, Drug Controller Office, Magadh Commissionaire, Gayaji, P.S.-Civil Lines, District- Gayaji.
3. The District Magistrate, Gayaji Collectorate, P.S.- Civil Lines, District- Gayaji, (Bihar).
4. The Superintendent of Police, Gayaji, P.S.- Civil Lines, District- Gayaji, (Bihar).
5. The Officer-in-Charge, Kotwali (Gayaji) Police Station, District- Gayaji (Bihar).

... ... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajeev Nayan, Advocate
For the Respondent/s : Mr. Anuj Kumar, AC to SC-12

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

5 18-09-2025 Heard learned counsel for the petitioner and learned AC to SC-12 for the State.

2. Pursuant to our order dated 17.09.2025, Mr. Sunil Kumar, Drug Inspector has appeared online. We have made some queries with respect to the two medicines which are subject matter of release in the present case.

3. The present writ application has been preferred seeking the following reliefs:-

> "I. For issuance of an appropriate writ/order/direction commanding respondents to release the medicines (cough syrup) and godown in favour of petitioner, which was seized & sealed by respondent no. 5 & 6 in connection with Kotwali (Gayaji) P.S. Case No. 21 of 2025 dated 17/01/2025, for the alleged occurrence dated 16/01/2025 at 16:45 Hrs under Section 30(a) of the Bihar Prohibition & Excise Act, 2016. Petitioner is the sole claimant and owner of the seized goods (Onerex and Wincerex cough syrup) and renter of seized godown.
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> II. For issuance of an appropriate writ/order/direction to the respondent authorities not to proceed with further by initiating destruction or confiscation proceeding with regard to alleged seized cough syrup, as mentioned in seizure-list, i.e. Onerex and Wincerex cough syrup.
>
> III. For issuance of any other appropriate writ/writs, order/orders, direction/directions for grant of other reliefs to which the petitioner may be found entitled under the facts & circumstances of the case."

4. It is the case of the petitioner that he is the proprietor of M/S S.R. Traders and sole claimant of the seized cough syrups (Onerex and Wincirex cough syrups). The petitioner has claimed that he has a valid licence to deal, store and sell the medicines to the retailers.

5. Learned counsel for the petitioner submits that the seized medicines are neither banned for the purpose of Bihar Prohibition and Excise Act or Narcotic Drugs and Psychotropic Substances Act as the same are saleable on the prescription of registered medical practitioners in the State of Bihar.

6. It is further submitted that in the same premises, the Drug Inspector was conducting raid in another room and for the seizures made therefrom, they have filed a complaint against other persons. This petitioner firm is not an accused in the said case. So far as the present case is concerned, it has been registered as a police case under Section 30(a) of the Bihar Prohibition and Excise Act giving rise to Kotwali (Gayaji) P.S. Case No. 21 of 2025 dated 17.01.2025.

7. Learned counsel submits that the medicines were seized from the godown of the petitioner which he had taken on rent. At this stage, it is submitted that there are valid registration and GST Certificates as contained in Annexure 'P/2' to the writ application which would show that the principal place of business of the petitioner is Paroriya, Manpur in the district of Gayaji. The registration certificate of the GST is valid from 12.12.2024 to 11.12.2029. The petitioner has also enclosed the copy of licence to sell, stock, or exhibit (or offer) for sale, or distribute by wholesale drugs specified in Schedule C and C(1) excluding those specified in Schedule X. It is submitted that the place of business is again shown as Paroriya, Manpur in the district of Gayaji.

8. Referring to the GST invoices which are annexed as Annexure 'P/3' to the writ application, learned counsel submits that it contains the batch number, HSN, the expiry date and the quantity of Wincirex syrup and Onerex syrup purchased from the firms, namely, Shivam Medical Store and N.T.S. Trading Company respectively. The copy of the transport permit has also been enclosed with the writ application.

9. It is submitted that these medicines, if not released, are likely to get expired within few months only. It is also submitted that without appreciating that the petitioner has a valid licence to sell and store these medicines, the Officer-in-Charge of the Police Station wrote a letter to the District Magistrate, Gayaji seeking his order to destroy the same.

10. Learned counsel has also pointed out from Annexure 'P/5' the information made available by Shri Vijay Kumar, Assistant Drug Controller vide Memo No. 352 dated 04.06.2025 from which it would appear that regarding Codein

Phosphate and Triprolidine Hydrochloride Syrup, it is stated that those are not banned in the State of Bihar.

11. Learned counsel for the State has though filed a counter affidavit on behalf of Respondent Nos. 4 to 6 but in the counter affidavit, the documents enclosed by the petitioner such as the licence to sell and store, the GST invoices and the transport permit have not been doubted and no question has been raised with regard to their authenticity.

12. In paragraph '14' of the counter affidavit, it is stated that a chargesheet has been submitted vide Chargesheet No. 211 of 2025 dated 28.02.2025. The only submission of learned counsel for the State is that the two medicines contain the ingredients which are falling within the purview of the Bihar Prohibition and Excise Act, 2016, therefore, those are the prohibited substances. In paragraph '17' of the counter affidavit, however, it is the stand of the State that at the time of seizure, the persons who were present there failed to produce any valid licence, permit or document in support of the possession, storage or transportation of the said substances.

13. In today's hearing, in course of our interaction with the Drug Inspector, we put a straight question to him as to whether or not these medicines are made for sale in the State of

Bihar. The answer is that the medicines may be sold through a valid licence holder on doctor's prescription. It is not banned in the State of Bihar. His only plea is that the medicines were seized from a place which is not mentioned in the licence of the petitioner. The Drug Inspector has not raised any other issue save and except with regard to the place of seizure. The medicines are still lying.

14. Having regard to the submissions noted hereinabove and on going through the records, we find that the petitioner has enclosed copy of the licence issued under Rules 61(1) and 61(2) of the Drugs and Cosmetic Rules, 1945 in Form 20B and Form 21B, the GST certificate of registration showing period of validity from 12.12.2024 to 11.12.2024, the transport permit and the GST invoices.

15. In such circumstance, we are of the considered opinion that the medicines which are likely to expire within few months cannot be kept under seizure for a long time. In this connection, there are catena of judgments of the Hon'ble Supreme Court. We rely upon the judgment of the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **(2002) 10 SCC 283** and the judgment of this Court in the case of **M/s Laborate**

Pharmaceuticals India Limited versus State of Bihar reported in **2021 SCC OnLine Pat 5606.**

16. Keeping in view the entire facts and circumstances, we direct the respondents to release the medicines, namely, Wincirex syrup and Onerex syrup which are under seizure after matching the batch number of the medicines as per the GST invoices. The chargesheet has already been filed. In case, the learned trial court thinks just and proper, a *panchnama* of the medicines which are going to be released shall be prepared and the same would be kept on the record. However, all such exercise be completed within three days from the date of receipt of a copy of this order and the medicines be released immediately.

17. This writ application is allowed.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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