

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67345 of 2025

Arising Out of PS. Case No.-398 Year-2025 Thana- Excise P.S. District- Kaimur (Bhabua)

Sarfaraj Ansari @ Sarfaraj Miyan Son of Ibrar Ansari Resident of village-
Lutua PS- Imamganj Dist- Gaya

... .. Petitioner/s

Versus

1. The Union of India, Narcotics Control Bureau, Patna, Bihar
2. The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Y.C. Verma, Sr. Advocate Ms. Kumari Anupam, Advocate
For the State	:	Ms. Nirmala Kumari, APP
For the UOI	:	Ms. Shail Kumari, CGC

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV ORDER

3 09-10-2025 Heard learned Senior counsel for the petitioner, learned
CGC for the Union of India and Ms. Nirmala Kumari, learned
APP for the State.

2. The petitioner has prayed for regular bail in a case
registered for the offence punishable under Sections 8(c), 21(c)
and 29 of the N.D.P.S. Act.

3. The case of the prosecution in short is that the
informant along with his associated was deployed in vehicle
checking at Mohania. On 09.06.2025 at about 01:05 A.M., a
Yoddha Pick-up bearing Registration No. BR02GC-6921
coming from the State of Uttar Pradesh was stopped for
checking, the petitioner and one another person were present in
the said vehicle. Upon being asked about the contents of the



vehicle, they failed to give any satisfactory reply. Thereafter, the vehicle was searched and upon search 18 gunny bags Phensedyl cough syrup was found containing total 36 cartons amounting to 360 liters.

4. Learned counsel for the petitioner has submitted that the petitioner is merely a driver and he was having no knowledge regarding the contraband. Learned counsel has further submitted that the petitioner is having clean antecedent and has submitted that the alleged recovery of Phensedyl cough syrup does not attract the provisions of NDPS Act. Phensedyl is a medicinal preparation manufactured under a valid license and regulated by Drugs and Cosmetics Act. It has also been submitted that as per Government of India notification no. S.O. 826 (E) dated 14.11.1985, codeine based medicinal preparation containing not more than 10 mg of codeine per doses unit and concentration not exceeding 100 mg per 100 ml when meant therapeutic use are exempted from operation of NDPS Act. In the present case, even as per the prosecution story, the alleged seizure of phensedyl bottles which are Schedule H drugs and not narcotic drug within the meaning of NDPS Act. Petitioner is languishing in judicial custody since 10.06.2025.

5. Learned counsel for the petitioner has relied on the judgment of Hon'ble Division Bench of the Hon'ble Delhi High



Court in the case of ***Mohd. Ahsan*** vs. ***Customs***. This was a referral case and two questions were referred before the learned Division Bench :

*“a) whether in cases specifically related to manufactured drug with a **miniscule percentage** of a narcotic substance, the weight of the neutral substance ought to be ignored while determining the nature of the quantity seized i.e. small, commercial or in between?*

*b) whether Note 4 of the S.O. 1055(E) dated 19th October, 2001 published in the Gazette of India, Extra., Pt.II, Sec3 (ii) dated 19th October 2001, as amended on 18.11.2009, should be held inapplicable to manufactured drug which contain a **miniscule percentage** of a narcotic drug?”*

6. In this case, cough syrup which has been recovered from the Yoddha Pick-up is phensedyl cough syrup (codeine). Phensedyl cough syrup with codeine comes in the trade name of “phensedyl new” which is the same drug as was in the case of ***Mohd. Ahsan*** (*supra*). I would like to refer **Section 2(xiv)** defines ‘narcotics drugs’ as:

"means coca leaf, cannabis (hemp), opium, poppy straw and includes all **manufactured drugs**".

(emphasis supplied)

Section 2(x) defining the term 'manufacture' reads as under:

"manufacture", in relation to narcotic



drugs or psychotropic includes- (1) all processes other than production by which such drugs or substances, may be or substances (2) refining of such drugs obtained; substances; (3) transformation of such drugs or substances; and **(4) making of preparation (otherwise than in a pharmacy on prescription) with or containing such drugs or substances;"**

(emphasis supplied)

Section 2(xi) defines "manufactured drug" as follows:

"(a) all coca derivatives, medicinal cannabis, **opium derivatives** and poppy straw concentrate;

(b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a manufactured drug; but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug;"

(emphasis supplied)

The term 'opium derivative' has been defined under Section 2(xvi) as:

“xxx

(c) phenathrene alkaloids, namely, morphine, **codeine**, thebaine and their salts;

xxx”

7. It is also pertinent to note here that the central



government is empowered to issue notifications regarding “manufactured drugs”. Central government has issued a notification 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”

8. In view of the foregoing discussion, I hold that in view of the fact that as per the composition of Phensedyl New Cough Linctus pleaded in the Writ Petitions, the prescription dosage of Phensedyl Cough Syrup is 5 ml and each dosage unit thereof contains 10 mg of Codeine Phosphate IP, besides Chlorpheniramine Maleate I.P., Phensedyl New Cough Linctus contains merely 0.2% Codeine, and this has not been disputed and rather has been admitted by the learned Counsel for the Respondent NCB that there is no dispute that the drug in



question fulfils the first condition for falling within the exception to Entry 35 of the Notification dated 14-11- 1985 issued by the Central Government containing the list of Narcotic Drugs, i.e. being "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", Phensedyl New Cough Linctus is not a Narcotic Drug and any dealing in this drug would not be subject to the provisions of the NDPS Act. The search and seizure conducted by the NCB Officials in Jaunpur on 17-01-2021 was without any authority of law and so is the complaint filed on 15-07-2021 by the Intelligence Officer, NCB under Sections 8, 21 (c), 22, 25, 29 and 60 (3) of the NDPS Act in the Court of Special Judge, NDPS Act at Jaunpur.

9. Considering above facts and circumstances of the case, I am of the view that as the concentration of codeine is not more than 2.5 % in undivided preparations, the cough syrup which has been recovered from the possession does not come under the ambit of NDPS Act and it is under the ambit of Drugs and Cosmetics Act. The provisions of NDPS Act are not attracted in this case.

10. Learned Additional Public Prosecutor for the State



and learned CGC for the Union of India have vehemently opposed the prayer of bail to the petitioner.

11. 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 Excise P.S. Case No. 398 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-cum-Special Judge, Kaimur at Bhabhua.

12. Accordingly, the present bail application stands allowed.

(Ashok Kumar Pandey, J)

Durgesh/-

AFR/NAFR	NAFR
CAV DATE	18.09.2025
Uploading Date	10.10.2025
Transmission Date	10.10.2025

