

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80652 of 2024

Arising Out of PS. Case No.-216 Year-2024 Thana- Excise P.S. District- Supaul

Abhishek Kumar Son of Jawahar Yadav village- Kolhaypatti ward no. 02, PS.
- Murliganj, Dist - Madhepura

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kuldeep Kumar, Advocate

For the Opposite Party/s : Mr. Choubey Jawahar, APP

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

ORAL ORDER

4 24-02-2025 Heard Mr. Kuldeep Kumar, learned counsel for the
petitioner and Mr. Choubey Jawahar, learned APP for the State.

2. The petitioner seeks bail in connection with Excise
& Prohibition Supaul P.S. Case No. 216 of 2024 instituted for
the offences under Sections 30(a) of the Bihar Prohibition and
Excise Act.

3. Prosecution case, in short, is that total 217.400 litres
Wiscaff cough syrup has been recovered in this case.

4. Earlier vide order dated 16.01.2025 an explanation
was called for from the State regarding the registration of the
FIR under the provisions of Excise Act despite the recovery
being of Wiscaff Cough Syrup containing codeine, a substance
which falls under the purview of the Narcotic Drugs and



Psychotropic Substances (NDPS).

5. Pursuant to the order dated 16.01.2025, learned APP for the State, Mr. Choubey Jawahar has filed the show-cause explanation. In paragraph no. 6 of the said explanation, it is stated that the State of Bihar vide Notification No. 11/Adhi.Karya-01-06/2016 and Notification No. 912 dated 19.10.2016, published in the Bihar Gazette Extraordinary has specifically notified medicinal preparations containing Codeine as intoxicating substance under the Bihar Prohibition & Excise Act. Learned APP referred the paragraph no. 8 of the show-cause explanation and submitted that both NDPS and the Excise Act contains the provisions that could potentially apply to the present case.

6. Learned counsel for the petitioner submitted that the petitioner has falsely been implicated in the present case. Petitioner is in custody since 06.09.2024 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. There is no compliance of Section 100 of the Cr.P.C. as also of Section 42 and 50 of the NDPS Act.

7. Learned A.P.P. for the State has vehemently



opposed the prayer for grant of bail to the petitioner stating that the total 217.400 litres of cough syrup has been recovered from the vehicle in question which amounts to 434.800 grams of Codeine, the narcotic substance as per the NDPS Act. He further submitted that altogether 434.800 grams of codeine has been found in the recovered cough syrup which is less than commercial quantity as per the NDPS Act and, hence, Section 37 of the NDPS Act is not applicable.

8. Considering the aforesaid facts and circumstances of the case, recovered contraband being less than commercial quantity as the NDPS Act, as also the period of custody undergone by the petitioner, this Court is inclined to grant bail to the petitioner.

9. Let the petitioner be released on bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of Court below/concerned Court in connection with Excise & Prohibition Supaul P.S. Case No. 216 of 2024.

(Rudra Prakash Mishra, J)

Alok Verma/-

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