

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76566 of 2025

Arising Out of PS. Case No.-302 Year-2025 Thana- Excise P.S. District- Banka

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Ajay Kumar Ray Son of Surendra Ray Resident of Village- Mansurpur
Halaiya, P.S.- Goraul, District- Vaishali (Bihar) Petitioner/s

Versus

The State of Bihar Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Singh, Advocate

For the Opposite Party/s : Mr. Narsingh Tanti, APP

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CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

2 19-11-2025 Heard learned counsel for the petitioner and learned

APP for the State.

2. The petitioner has prayed for regular bail in a case registered for the offence punishable under sections 08 and 21 (b) of the NDPS Act.

3. The case of the prosecution, in short, is that a truck was coming at a high speed towards Hansdiha (Jharkhand) which was intercepted by the police. During enquiry, the driver of the vehicle has disclosed his name as Ajay Kumar Rai (the petitioner herein). Upon searching the vehicle, the police recovered 30 boxes each with 120 bottles of 100 ml, a total of 3600 bottles of Codeine Phosphate Triprolidine Hydrochloride Syrup Wincerex Cough Syrup. The consignment was allegedly being transported from North Eastern Roadways Transport Company to Shivpriya Abhiraj Medico Gudari Bazar, Sitamarhi.

4. Learned counsel for the petitioner submits that the



petitioner is innocent and has falsely been implicated in connection with the present case. It is further contended that the petitioner is only a driver of the truck who was transporting the consignment on behalf of North Eastern Roadways Transport Company and had no knowledge regarding the consignment which was made between the two companies. His only role is to drive the truck carrying the alleged cough syrup. Moreover, the petitioner is languishing in judicial custody since 29.07.2025 having no criminal antecedent.

5. Learned counsel for the petitioner has submitted that the Central Government has issued Notification No. S.O. 826(E) dated 14.11.1985 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:-

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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”

6. In this case, Wincerex Cough Syrup has been recovered from the possession of the petitioner and the concentration of the codeine in this drug is 0.2% which is less than 2.5% as provided in the above notification.

7. Learned APP appearing for the State has vehemently the application for bail and has submitted that in the case of Hira Singh and Anr. V. Union of India and Anr., the Hon’ble Supreme Court has held that entire non-toxic material which is mixed with the contraband will be considered as the contraband and as such, the quantity which has been recovered from the possession of this petitioner is commercial quantity.

8. In this regard, it is worth mentioning that in view of Section 2(d) of the N.D.P.S. Act, the drug itself is not narcotic drug then there is no jurisdictional basis for the case and the Court would not have a reason to go into the question of quantities. The Central Government has power to issue notification time to time.

9. Considering the aforesaid 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 Banka Excise P.S. Case No. 302 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 Special Judge NDPS Act, Banka.

(Ashok Kumar Pandey, J)

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