

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.81053 of 2025**

Arising Out of PS. Case No.-106 Year-2025 Thana- MANIHARI District- Katihar

Md. Akbar @ Akbar Khan S/o Ayub Khan Resident of village - Rasulpur, P.S
- Manihari, District – Katihar Petitioner/s

Versus

The State of Bihar Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Rabia Gulnaz, Advocate

For the Opposite Party/s : Mr. Ram Anurag Singh, APP

**CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER**

2 03-12-2025 Heard learned counsel for the petitioner and Mr. Ram
Anurag Singh, 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), 20(c), 22(c) and 25 of the NDPS Act.

3. The case of the prosecution is that the informant along with police personnel was on patrolling duty at Lal Bagh Chowk. The informant received secret information that the petitioner had kept illegal Codeine cough syrup in his house. The informant along with others reached the house of the petitioner and searched the house. The petitioner was not there in the house. On search, total 63.500 liters of Cencod-T cough syrup containing codeine was recovered.

4. Learned counsel for the petitioner has submitted that seizure has not been made in presence of any of the inmates of the house and the witnesses are police personnel. Learned counsel for the petitioner has further submitted that the petitioner is a man of clean antecedent and is in judicial custody since 18.08.2025.

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:-

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”

6. In this case, Cencod-T 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 form 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. 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 Manihari P.S. Case No. 106 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 District and Additional Sessions Judge-I, Katihar.

(Ashok Kumar Pandey, J)

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