

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86194 of 2025

Arising Out of PS. Case No.-450 Year-2025 Thana- PATNA CITY CHOWK District- Patna

1. Shankar Jha S/O Late Baldeo Jha Resident of village - Malmal, P.S-
Kaluahi, District - Madhubani
2. Vijay Pandey Son of Sri Sakaldeo Pandey @ Satendra Pandey Resident of
village Chakladar, P.S. Vaishali, District Vaishali

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Vaishnavi Singh, Advocate Mr. Ritwik Thakur, Advocate
For the Opposite Party/s :		Mr. Braj Kishore Pd., APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

2 16-12-2025 Heard learned counsel for the petitioners and learned

APP for the State.

2. The petitioners has prayed for bail in connection
with Chowk P.S. Case No. 450 of 2025 registered for the
offence punishable under Sections 21(C) and 8A(c) of the
N.D.P.S. Act.

3. The case of the prosecution in short is that from the
roof of Jai Mata Di bus, altogether 760 liters of Onerex cough
syrup and Korcof-c containing codeine was recovered and the
petitioners were made accused in that case.

4. Learned counsel appearing on behalf of the
petitioners has submitted that petitioners are innocent and have



committed no offence. They have been falsely implicated in this case. Learned counsel for the petitioners has submitted that the petitioners fail to understand as to under what circumstances the petitioners have been accused in this case. They are neither the owner nor the driver. It has also been submitted that from perusal of the forwarding of the petitioners in para-2, it has been written that from their bus, a syrup was recovered. He also submits that the petitioners are not the owners of the bus. Onerex cough syrup and Korcof-c were recovered. From perusal of the FIR, it is clear that the petitioners are not concerned in any way with the said recovery. He further submits that the petitioners are having no criminal antecedent and they are languishing in judicial custody since 25.10.2025.

5. Learned counsel for the petitioners 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, Onerex Wings Codeine Phosphate Cough Syrup has been recovered from the possession of the petitioners and the concentration of the codeine in this drug is approximately 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 petitioners on bail. The above named petitioners are directed to be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Rs. ten thousand only) each with two sureties of the like amount each to the satisfaction of the learned Sessions Judge/Special Judge, (NDPS), Patna in connection with Chowk P.S. Case No. 450 of 2025.

(Ashok Kumar Pandey, J)

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