

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86466 of 2025

Arising Out of PS. Case No.-136 Year-2025 Thana- BHUTAH I District- Sitamarhi

1. Sudhir Kumar S/o- Ram Naresh Ray R/Village - Laxminagar, ward no. 37 New ward no. -1 old, Mehsaul Purvi, P.S.- Mehsaul, O.P. Thana, P.S. -Bhutahi is wrongly typed on the 2nd page of the F.I.R. Dist.- Sitamarhi
2. Pintu Kumar S/o- Naresh Singh R/Village - Laxminagar, ward no. 37 New ward no. -1 old, Mehsaul Purvi, P.S.- Mehsaul, O.P. Thana, P.S. -Bhutahi is wrongly typed on the 2nd page of the F.I.R. Dist.- Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Santosh Kumar, Advocate
For the Opposite Party/s : Mr. Sanjay Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

2 17-12-2025 Heard learned counsel for the petitioners and learned
APP for the State.

2. The petitioners have prayed for bail in connection with Bhutahi P.S. Case No. 136 of 2025 registered for the offence punishable under Section 21(C) of the N.D.P.S. Act.

3. The case of the prosecution is that from a car, altogether 279 bottles each of 100 ml cough syrup containing codeine was recovered. Specifically the cough syrup is Triprolidine hydrochloride and codeine phosphate cough syrup which is altogether 27.9 liters.

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



committed no offence. They have been falsely implicated in this case. Nothing has been recovered from their possession. Police has not complied Section 105 of B.N.S.S while preparing seizure list. There is no independent witness of the seizure list rather they are police personnel. A statement has been made in para-3 of this petition that the petitioners have got no criminal antecedent. Moreover, they are languishing in judicial custody since 08.10.2025.

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:-

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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, Triprolidine hydrochloride and 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 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. 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 Special Judge, Sitamarhi in connection with Bhutahi P.S. Case No. 136 of 2025.

(Ashok Kumar Pandey, J)

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