

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4819 of 2026

Arising Out of PS. Case No.-212 Year-2025 Thana- R S P.S. District- Araria

Safi Ahmad @ Md. Shafi Ahmad @ Shafi Ahmad S/O Late Md. Shawoor Alam @ Late Shaour Alam Resident of Islamnagar, Ward No. 26, P.S. and District- Araria. Petitioner/s

Versus

The State of Bihar Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ranjeet Choubey, Advocate
For the Opposite Party/s : Mr. Ram Sevak Choudhary, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

2 03-02-2026 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 21, 22 and 23 of the NDPS Act and under Section 111(1) of the BNS.

3. The case of the prosecution, in short, is that from the possession of this petitioner altogether 103 liters cough syrup containing codeine was recovered.

4. Learned counsel for the petitioner has submitted that nothing has been recovered from the possession of this petitioner. From perusal of the seizure list it will transpire that the witnesses of the seizure list are police personnel and they have not complied Section 105 of the BNSS while making seizure. It has further been submitted that though police has stated that cough syrup containing codeine was recovered but has not mentioned brand name. Without brand name it cannot be ascertained as to what was the concentration of codeine in the



said cough syrup. Learned counsel for the petitioner has submitted that the petitioner is having no criminal antecedent and he is in judicial custody since 30.11.2025.

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. 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.

7. 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.

8. 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 R.S. P.S. Case No. 212 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, Araria.

(Ashok Kumar Pandey, J)

durgesh/-

U		T	
---	--	---	--

