IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11557 of 2026

Arising Out of PS. Case No.-250 Year-2025 Thana- GAIGHAT District- Muzaffarpur

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Bhola Rai @ Bhola Ray Son of Bhikhu Rai Resident of Village- Kataru Chak Mahamad, P.O.- Garaul, P.S.- Belsar, District- Vaishali

... ... Petitioner/s

Versus

The State of Bihar Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Gajendra Kumar Singh, Advocate
For the Opposite Party/s : Mr.Umesh Lal Verma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL ORDER

2 10-03-2026 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 (c) of the NDPS Act.

3. The case of the prosecution is that altogether 760 liter of codeine Eskuf Cough Syrup was recovered from the van and the petitioner is said to be the driver of that Van.

4. Learned counsel appearing on behalf of the petitioners has submitted that petitioners are innocent and have committed no offence. He has been falsely implicated in this case. He has no concern in any way with the alleged contraband. Moreover, he is languishing in judicial custody since 10.10.2025 having no criminal antecedent.

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5. Learned counsel for the petitioner has submitted that Under Notification No. S.O. 826(E) dated 14.11.1985 under the Narcotic Drugs and Psychotropic Substances Act and Rules, 1985 that preparations are exempted as manufactured drugs provided the preparations contained the narcotic drugs to the extent permitted in respect of codeine under Entry No. 35. It is stated that codeine and ethyle morphine and their salts including dionine all dilutions and preparations are considered to be manufactured drugs except those which are compounded with one or more other ingredients and containing not more than 100 miligrams of the drugs per doses unit and with a concentration of not more than 2.5 % in undivided preparations and which have been established in therapeutic practice.

6. In this case, Eskuf cough Syrup has been recovered 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 the

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petitioners 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.

11. 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 NDPS Case No. 174 of 2025 arising out of Gaighat P.S. Case No. 250 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 Exclusive Special Judge -II (NDPS), Muzaffarpur.

10. Before parting, it is very strange that the cases where cough syrups containing codeine are recovered, the police is invariably filing cases under N.D.P.S. Act whereas in view of the notification of Central Government (supra) concentration of codeine being less than 2.5 %, the quantity does not come under the ambit of contraband. Cough syrup containing codeine is only a Schedule-H drug for which, the shopkeeper has to maintain register and he must be a licensed

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one. Such type of cases should be filed under Drugs and Cosmetic Act. It is only the violation of Drugs and Cosmetic Act whereas, police is invariably misusing the procedure.

(Ashok Kumar Pandey, J)

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