

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21452 of 2026

Arising Out of PS. Case No.-8 Year-2026 Thana- Bathnaha District- Araria

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1. Surfan Baitha @ Sarfan Baitha, S/O Late Bhutai Baitha, R/O Village- Amauna, Ward No. 20, P.S- Jogbani, Distt.- Araria. At present- R/O Village- Sonapur, Ward No. 11, P.S- Bathnaha, Distt.- Araria.
 2. Sohrab Baitha @ Sohrab, S/O Surfan Baitha, R/O Village- Amauna, Ward No. 20, P.S- Jogbani, Distt.- Araria. At present- R/O Village- Sonapur, Ward No. 11, P.S- Bathnaha, Distt.- Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vijay Kishore Bharti, Advocate
For the Opposite Party/s : Mr.Madan Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

2 06-04-2026 Heard learned counsel for the petitioners and learned
APP for the State.

2. The petitioners have prayed for bail in connection with Bathnaha P.S. Case No. 08 of 2026 registered for the offence punishable under Section 30(a) of Bihar Prohibition and Excise Act.

3. The case of the prosecution, in short, is that altogether 470 bottles of Wiscorex Cough Syrup (100 ml each) containing codeine were recovered from an orchard which belongs to the petitioners.

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. Nothing has been recovered from their possession. The recovery has been made from the orchard which is an open place. Learned counsel for the petitioners has submitted that from perusal of the seizure list, it will transpire that the seizure list witnesses are not independent witness rather they are police personnel. Police has also not followed the provision of Section 105 of B.N.S.S. while making seizure. Petitioner no.1 is having criminal antecedent of one case in which he is on bail whereas petitioner no.2 is having no criminal antecedent. They are languishing in judicial custody since 16.01.2026.

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, Wiscorex Cough Syrup has been recovered from the orchard 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 Exclusive Special Judge, Excise-I, Araria in connection with Bathnaha P.S. Case No. 08 of 2026.

(Ashok Kumar Pandey, J)

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