

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23652 of 2026

Arising Out of PS. Case No.-449 Year-2025 Thana- AMAUR District- Purnia

Minhaj @ Mini Son of Late Amiruddin @ Azimuddin R/O Village- Bara Eid
Gah, P.S.- Amour, District- Purnea

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Adv.

Mr. Bidhu Ranjan, Adv.

For the Opposite Party/s : Mr. Anand Kishore Choudhary, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

2 24-04-2026 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner has prayed for bail in connection with Amour P.S. Case No. 449 of 2025 registered for the offence punishable under Sections 8(c) and 21(b) of the N.D.P.S. Act.

3. The case of the prosecution is that from the house of this petitioner, altogether 95 bottles of codeine cough syrup containing codeine each of 100 ml were recovered.

4. Learned counsel appearing on behalf of the petitioner has submitted that petitioner is innocent and has committed no offence. He has been falsely implicated in this case. Learned counsel for the petitioner has submitted that from perusal of the seizure list, it will transpire that the seizure



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. He further submits that similar situated co-accused namely Bibi Tabassum who is the wife of this petitioner has been granted bail by this court vide Cr. Misc. No. 88700 of 2025. The case of this petitioner stands on similar footing. A statement has been made in para-3 of this petition that the petitioner has got one criminal antecedent. Moreover, he is languishing in judicial custody since 09.02.2026.

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. In this case, cough Syrup containing codeine phosphate and triprolidine hydrochloride 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 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 petitioner on bail. The above named petitioner is directed to be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Rs. ten thousand only) with two sureties of the like amount each to the satisfaction of the learned Principal Special Judge (NDPS Act), Purnea in connection with Amour P.S. Case No. 449 of 2025.

(Ashok Kumar Pandey, J)

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