IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58729 of 2026

CNR No. BRHC010843122026

Arising Out of PS. Case No.-395 Year-2026 Thana- Excise P.S. District- Purnia

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Niranjan Yadav S/o Shri Godo Yadav R/o Village- Ganeshpur Kajha,Ward No.15, P.S. - K. Nagar, District- Purnea

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Deepak Kumar, Advocate
For the Opposite Party/s : Mr. Nagendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KUMAR MANISH

ORAL ORDER

5 19-11-2026 Heard learned counsel for the petitioner and learned A.P.P. on behalf of the State.

2. This application is filed for grant of regular bail to the petitioner who has been made accused in connection with Excise Sadar P.S. Case No. 395 of 2026, registered for the offences punishable under Section 21(c) of the N.D.P.S. Act.

3. As per the prosecution, there is a recovery of 12,000 bottles of 100 ml cough syrup (Codeine Phosphate and Triprolidine Hydrochloride Syrup) amounting to 1,200 liters from a Tata Magic vehicle bearing Registration No. BR11GA-5339.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence as alleged in the FIR and has been falsely implicated in the present case. It is

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submitted that the petitioner is neither the owner nor the driver of the aforesaid seized vehicle and nothing incriminating has been recovered from the conscious possession of the petitioner. Further, it is submitted that the petitioner has no concern either with the seized vehicle or the seized cough syrup.

5. It is submitted that there is no independent witness of the alleged seizure list and the witnesses of the seizure list are police party which is a clear violation of the mandatory provisions of Section 105 of the B.N.S.S. Further, it is stated that, there is a non-compliance of Sections 42 and 50 of the N.D.P.S. Act.

6. 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 milligrams 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

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practice.

7. 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. Learned counsel for the petitioner submits that investigation has been completed and charge-sheet has been filed against the petitioner and the petitioner is in judicial custody since 27.06.2026 having a clean antecedent.

9. Learned A.P.P. for the State has vehemently opposed the prayer for bail of the petitioner.

10. Considering the aforesaid facts and circumstances of the case, the period of custody and also taking into consideration the materials available on record, the petitioner, above named, is directed to be enlarged on bail on furnishing bail bond of Rs.10,000/- (Ten thousand rupees) with two sureties of the like amount each to the satisfaction of the Court of learned Special Judge (NDPS Act), Purnea in connection with Excise Sadar P.S. Case No. 395 of 2026 on the following conditions:-

(i) That one of the bailors should be family member of the petitioner.

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(ii) That the petitioner will cooperate in the trial and will remain present on all dates personally or should be duly represented through his counsel and whenever required to be physically present by the Court, he should physically appear in Court on that date.

(iii) If the petitioner tampers with the evidence or threatens the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

11. 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 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.

(Kumar Manish, J)

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