IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71023 of 2026

CNR No. BRHC011025862026

Arising Out of PS. Case No.-150 Year-2026 Thana- PRATAPGANJ District- Supaul

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1. Ranjan Raj @ Ranjan Rai @ Ranjan Ray S/o Ramesh Ray R/o - Bank Colony, Vishnunagar, Kapur Dihara, P.S - Nawada, District - Bhojpur
2. Manish Kumar S/o Shree Ram Singh R/o Village - Ijri, Mathiya, P.S - Buxar Mufassil, District - Buxar

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Abhishek Bharti, Advocate
For the Opposite Party/s : Mr. Ram Naresh Ray, APP

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CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL ORDER

3 28-10-2026 Heard learned counsel for the petitioners and learned APP for the State.

2. The petitioners have prayed for regular bail in a case registered for the offence punishable under section 303(2) of the BNS and Section 21(c) of the NDPS Act.

3. The case of the prosecution is that petitioners along with others have sold 284 bottles of cough syrup each of 100 ml containing codeine from the m*alkhana* and that as this fact was known to others, it is alleged that they have purchased the said syrup from open market and restored the same in the m*alkhana.*

4. Learned counsel for the petitioners submits that the petitioners are innocent and have committed no offence. They have falsely been implicated in this case. Learned counsel for the

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petitioner has submitted that the allegation against the petitioners is that he has stolen the WISCOF-DX cough syrup from the m*alkhana* and has again restored the same by purchasing it from open market. It has further been submitted that allegation against the petitioner is based on the statement of co-accused persons. From perusal of FIR, it is not clear as to what was the Batch No. of the entire codeine cough syrup which was kept in the m*alkhana*. It has further been submitted that as far as WISCOF-DX cough syrup which is said to be stolen and restored by the petitioner in the m*alkhana* is cough syrup and is not a contraband in view of the 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.

5. In this case, WISCOF Cough syrup containing

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codeine phosphate has been recovered from 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. This is only for the contravention of the Drugs and Cosmetic Act.

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 the 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. Moreover, a statement has been made in para-3 of the petition that the petitioners are having no criminal antecedent. They are languishing in judicial custody since 15.06.2026.

8. Learned APP appearing for the State has vehemently opposed the prayer of regular bail.

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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 released on bail in connection with Pratapganj P.S. Case No. 150 of 2026 on furnishing bail bond of Rs.10,000/- (ten thousand) each of them with two sureties of the like amount each to the satisfaction of learned court of Special Judge (NDPS), Supaul.

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 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)

Sneha/-
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