IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75610 of 2026

CNR No. BRHC011077812026

Arising Out of PS. Case No.-104 Year-2026 Thana- INDUSTRIAL AREA District- Vaishali

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Krishan Kumar @ Krishna Kumar S/o Suresh Bhagat R/o Village - Anchal Sonbarsa, Ward No. 3, Basahia, Sitamarhi, P. Dadan, P.S - Bhutahii, District - Sitamarhi, Pin - 843317

... ... 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. Nagendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE GIRIJISH KUMAR

ORAL ORDER

2 28-10-2026 Heard learned counsel appearing on behalf of the petitioner and learned A.P.P. appearing on behalf of the State.

2. Petitioner is in custody in connection with Vaishali Industrial Area P.S. Case No. 104 of 2026, registered for the offence punishable under Sections 21(C), 25 and 29 of the NDPS Act, 1985.

3. As per the prosecution case, on 03.07.2026, at about 3:10 PM, the informant, PSI Vinay Kumar Kushwaha, along with other police officials, were conducting a special raid on information from the Prohibition and State Narcotics Control Bureau that codeine phosphate-containing cough syrup was being stored illegally at the joint premises of Vinay Kumar and

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Bipin Kumar near Jandaha Road, Sultanpur, Vaishali. The police party, accompanied by the Magistrate, reached the premises at about 3:20 PM, where the petitioner, Krishan Kumar @ Krishna Kumar, was apprehended. During the search, the police allegedly recovered 311 cartons of WISCOREX Cough Syrup, comprising 49,735 bottles, from the godown. The Drug Inspector subsequently informed the police that the cough syrup contained codeine phosphate, a substance covered under the NDPS Act. A TVS Raider motorcycle and three mobile phones were also allegedly recovered.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence. He has been falsely implicated in the present case merely on the basis of suspicion and no incriminating material has been recovered from his conscious possession. It is further submitted that the only allegation against the petitioner is that when raid was conducted he was trying to flee in front of house of Vinay Kumar and Bipin Kumar. The petitioner has no criminal antecedent and is in custody since 04.07.2026. On these grounds, learned counsel for the petitioner prays that the petitioner be enlarged on regular bail.

5. Learned A.P.P., appearing on behalf of the State,

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vehemently opposes the prayer for bail and submits that during search the police recovered 311 cartons of WISCOREX Cough Syrup comprising 49,735 bottles, which is above the commercial quanity, from the godown of the petitioner and the petitioner was trying to flee from the place of incident and he was arrested on the spot. In para 3, the informant and in para 18, 19, 20, 21 and 22 of the case diary, witnesses have supported the case of the prosecution. It appears that rent agreement was entered into between petitioner and Vinay Kumar and the same is pasted in para 31 of the case diary. In para 32 of the case diary petitioner has confessed his involvement in the alleged offence. Learned APP for the State has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Hira Singh and Anr. Vs. Union of India and Anr,*** reported in ***(2020) 20 SCC 272*** in which it has been held that :

> *"weight of entire materials/ mixture along with neutral material is to be considered for ascertainment of whether the quantity is "small quantity" or "commercial quantity".*

6. It is further submitted that codeine is mentioned in the Entry No. 28 of the N.D.P.S. Act. The act of the petitioner amounts to clear violation of section 8 of the N.D.P.S. Act as it clearly prohibits possession of narcotic substance except

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medical and scientific purposes.

7. As per Section 37 of the N.D.P.S. Act, the two conditions are that the Court should be satisfied with:-

> *"(i) There are reasonable grounds for believing that the accused is not guilty of such offence; and*
>
> *(ii) He is not likely to commit any offence while on bail."*

8. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail. The Court is of the opinion that the parameters of bail available under Section 37 of the Act have not satisfied in the facts of the instant case. The Hon'ble Supreme Court in the case of ***Narcotics Control Bureau Vs. Mohit Aggarwal*** reported in **2022 SCC Online SC 891** has held that :

> *"The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the N.D.P.S Act."*

8. Considering the facts and circumstances of the case, materials available on record as well as the fact that huge quantity of WISCOREX Cough Syrup has been recovered which is more than commercial quantity from the premises/godown which is in possession of the petitioner, this

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Court is not inclined to grant the privilege of regular bail to the petitioner.

9. Accordingly, the prayer for bail of the petitioner is, hereby, rejected.

(Girijish Kumar, J)

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