IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76944 of 2026

CNR No. BRHC011099172026

Arising Out of PS. Case No.-171 Year-2026 Thana- CHAUTHAM District- Khagaria

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Dukhan Kumar S/O Anil Sharma R/O Vill.- Beldaur, Ward no. 15, P.s.- Beldaur, Dist.- Khagaria

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Siddhartha Prasad, Advocate
Mr. Rahul Kumar, Advocate
Mr.Shashank Shekhar, Advocate
For the Opposite Party/s : Mr.Chandra Sen Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

2 28-10-2026 Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. The petitioner seek regulars bail in connection with Chautham P.S. Case No. 171 of 2026 lodged on 23.05.2026 under Sections 8(c), 21(c), 29 of the NDPS Act, 1985.

3. As per the prosecution case, the present FIR has been lodged against two named and one unknown and one unknown owner of the vehicle with allegation of recovery of 145 liters of Cough Linctur RJT-SCEN syrup containing codeine.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence. Neither has

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any recovery been made from the conscious possession of the petitioner nor was the petitioner apprehended at the place of occurrence. The petitioner has been implicated in the present case solely on the basis of secret information received by the police to the effect that the petitioner, along with the other co-accused persons, was travelling as the driver or pillion rider of the vehicle from which the alleged contraband was recovered. Learned counsel submits that, in the absence of any recovery from the conscious possession of the petitioner, no offence under the NDPS Act is made out against him. Learned counsel for the petitioner further submits that a Co-ordinate Bench of this Court, while granting bail in the case of *Bharat Kumar v. The State of Bihar* (Criminal Miscellaneous No. 60727 of 2026), considered Notification No. S.O. 826(E) dated 14.11.1985, issued under the Narcotic Drugs and Psychotropic Substances Act, 1985, and the Rules framed thereunder. It is submitted that the Co-ordinate Bench recorded a specific finding with regard to the drug involved in the present case and held that, where the substance itself does not fall within the definition of a narcotic drug, there is no jurisdictional basis for proceeding under the NDPS Act, and consequently, there is no occasion for the Court to examine the question of quantity. The petitioner has been in

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custody since 24.07.2026 and is also an accused in one other criminal case.

5. Learned counsel for the State opposes the prayer for bail and submits that the FIR has been registered under the NDPS Act. It is further submitted that, in *Hira Singh and Another v. Union of India and Another*, the Hon'ble Supreme Court has held that the entire quantity of the mixture, including the neutral substance mixed with the contraband, is to be taken into consideration for determining the quantity of the contraband. Accordingly, the quantity recovered in the present case falls within the category of commercial quantity.

6. Having heard the rival submissions and perused the materials available on record, this Court considers it appropriate to reproduce the relevant paragraphs of the order dated 01.10.2026 passed in *Bharat Kumar v. The State of Bihar* (Criminal Miscellaneous No. 60727 of 2026), which read as follows: -

> *"5. Learned counsel for the petitioner has further 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*

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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 % inundivided preparations and which have been established in therapeutic practice.

6. In this case, Cough Linctur RJT-SCEN Syrup containing codeine has been recovered and the concentration of the codeine in this drug is less than 2.5% as provided in the above notification. This is only contravention of Drugs and Cosmetics Act.

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 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.

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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 Special Judge, NDPS Act, Khagaria in connection with N.D.P.S. Spl. Case No. 28 of 2026 arising out of Chautham P.S. Case No. 157 of 2026.

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."

7. In view of the submissions advanced on behalf of the parties and, particularly, the observations made in

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paragraphs 5 to 10 of the order passed in *Bharat Kumar* (supra), this Court is inclined to grant bail to the petitioner.

8. Accordingly, let the petitioner above named, be granted bail on furnishing bail bonds of Rs.30,000/- (Rupees Thirty thousand) as mentioned in Section 2(1) (d) of the BNSS, 2023 to the satisfaction of learned Special Judge (NDPS Act), Khagaria, in connection with Chautham P.S. Case No. 171 of 2026, subject to the conditions as laid down under Section 480(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

(Dr. Anshuman, J)

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