

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.89635 of 2025**

Arising Out of PS. Case No.-180 Year-2025 Thana- BELA District- Sitamarhi

Md. Shabir @ Raja @ Md. Sabbir S/O Chhote @ Md. Chhote R/O Village-  
Mach Pakauni, P.S- Bela, Distt.- Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mrs .Madhubala Verma, Advocate

For the Opposite Party/s : Mr. Ashok Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY**  
**ORAL ORDER**

2      15-01-2026                      Heard learned counsel for the petitioner and learned  
APP for the State.

2. The petitioner has prayed for bail in connection with Bela P.S. Case No. 180 of 2025 registered for the offence punishable under Section 21(c) of the N.D.P.S. Act.

3. The case of the prosecution is that from the possession of this petitioner, altogether 120 bottles each of 100 ml Onerex cough syrup containing codeine was 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. There is no independent witness of the seizure list rather they are police personnel. Police has not followed Section 105 of B.N.S.S. while making seizure. Moreover, he is languishing



in judicial custody since 24.08.2025. He is having criminal antecedent of two cases.

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:-**

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*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, Onerex cough Syrup 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 Special Judge(NDPS Act), Sitamarhi in connection with Bela P.S. Case No. 180 of 2025.

**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.

11. Office is directed to communicate this order to D.G.P. ( Director General of Police, Bihar) for needful.

(Ashok Kumar Pandey, J)

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