

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.88848 of 2025

Arising Out of PS. Case No.-1153 Year-2024 Thana- Excise P.S. District- Purnia

Samar Saha Son of Dilip Saha R/O Village - Jot Teor, P.O.- Tiyor, P.S.- Hilli,
District - Dakshin Dinajpur, State - West Bengal.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :
For the Petitioner/s : Mrs. Vaishnavi Singh, Advocate
For the Opposite Party/s : Mr. Satya Nand Shukla, APP

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

2 06-01-2026 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner has prayed for bail in connection with Excise Sadar P.S. Case No. 1153 of 2024 registered for the offence punishable under Sections 21(c), 25 and 29 of the N.D.P.S. Act.

3. The case of the prosecution is that 100 files of PHENSEDYL cough syrup containing codeine (each of 100 ml) was recovered from a car.

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. Learned counsel for the petitioner has submitted that from perusal of the seizure list, it will transpire that the seizure



witnesses are not independent witness rather they are police personnel. Police has also not followed the provision of Section 105 of B.N.S.S. while making seizure. Petitioner is the driver of the said vehicle and he has no knowledge regarding the alleged cough syrup. Moreover, the petitioner is languishing in judicial custody since 06.12.2024.

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:-

xxx

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, PHENSEDYL cough Syrup containing codeine 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, 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), Purnea in connection with Excise Sadar P.S. Case No. 1153 of 2024.

(Ashok Kumar Pandey, J)

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