

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.6732 of 2026**

Arising Out of PS. Case No.-549 Year-2025 Thana- SUPAUL District- Supaul

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Rajesh Kumar @ Mukesh Kumar, S/O Ramesh Prasad @ Shiv Narayan  
Yadav @ Ramesh Prasad Yadav, Resident of Village- Amha (Amaha) Ward  
No. 05, P.S.- Laukaha, District- Supaul, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Kuldeep Kumar, Advocate

For the Opposite Party/s : Mr. Anand Kishore Choudhary, APP

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

2      10-02-2026                      Heard learned counsel for the petitioner and learned  
APP for the State.

2. The petitioner has prayed for bail in connection  
with Supaul P.S. Case No.549 of 2025 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, in short, is that from an  
E-rickshaw where two persons were sitting except the driver,  
altogether 240 bottles of Wiscof Cough Syrup containing  
codeine were 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. Nothing has been recovered from his possession. It has



further been 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 languishing in judicial custody since 06.11.2025.

5. Learned counsel for the petitioner has 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 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.

6. In this case, Codeine Phosphate & Triprolidine Hydrochloride Syrup (Wiscof) has been recovered from an E-rickshaw 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 this 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), Supaul in connection with Supaul P.S. Case No.



549 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.

(Ashok Kumar Pandey, J)

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