

Sunil Kumar Choudhary, Aged about 50 years, S/o Bhavanand Choudhary, R/o Village - Lagma, Rambhadrapur, Ward No.- 11, P.S. - Sakatpur, District - Darbhanga

----- Petitioner

versus

State of Bihar

----- Opposite Party

Appearance(s):

Counsel for the Petitioner(s)

: Sri Anil Kumar Singh, Learned Advocate.

Counsel for the State

: Sri Chamak Lal Pandit, Learned Special Public Prosecutor.

ORDER

20.07.2026

1. The petitioner above named sought regular bail in connection with LNMU P.S. Case No 162/2026 registered for the offence under Sections 21(c), 22(c) of the Narcotic Drugs & Psychotropic Substances Act (hereinafter referred to as 'NDPS' for short). The petitioner has been in judicial custody since 21.06.2026.
2. The Learned counsel appearing on behalf of the petitioner submitted that he was innocent and had not committed any offence. It was also submitted that prior to this the petitioner had not filed bail petition of any sort earlier before this court or before any superior court. It was also submitted that the petitioner had no criminal antecedent. It was further submitted that the petitioner had been falsely implicated in this case due to business rivalry in collusion with officer of the drug department and police. It was also submitted that the petitioner has no concern in any way with the alleged cough syrup. It was alleged that nothing has been recovered either from the custody or from the conscious possession of the petitioner. It was further alleged that the entire allegations as alleged by the prosecution are concocted and baseless. It was further alleged that the police has not complied section 105 of the BNSS while preparing seizure. It was also submitted that from bare perusal of FIR your honour shall find that alleged contraband has not been recovered from the shop of the petitioner, rather same has been recovered from unrented premises of landlord. It was also alleged that no case u/s 21(c), 22(c) of the NDPS Act is made against this petitioner. Relying on the order dated 18.02.2026 passed in Criminal Miscellaneous 12368 of 2026 in the case of Razi Ahmad Vs State of Bihar and the order dated 27.02.2026 passed in Criminal Miscellaneous No. 83580 of 2024 Bimal Kumar Verma Vs The State Of Bihar, the learned counsel 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 milligrams 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. It was submitted that the petitioner was ready to abide by the condition(s) imposed upon him by the learned court. The learned counsel prayed for grant of regular bail to the petitioner.
3. The Learned Special Public Prosecutor has vehemently opposed 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 petitioners is commercial quantity.
4. Heard both the sides, perused the case record and the case diary.
5. The allegation against the petitioner is that he illegally stored the codeine containing syrup in huge quantity and Omdel Cough Syrup 1000X100 ml and Ohmerex T Cough Syrup 120X100 ml were recovered.

6. It is stated that the petitioner is a licensed medicine shop owner. Hon'ble High Court order dated 18.02.2026 passed in Criminal Miscellaneous 12368 of 2026 in the case of Razi Ahmad Vs State of Bihar and the order dated 27.02.2026 passed in Criminal Miscellaneous No. 83580 of 2024 Bimal Kumar verma Vs The State Of Bihar has been pleased to hold 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. The sampling memo Form 17 and 17A shows that Omdel Syrup dose of each 5 ml contains Triprolidine Hydrochloride IP - 1.25 mg codeine phosphate IP - 10 mg and Omherex-T cough syrup dose of each 5ml contains codeine phosphate IP - 10 mg Triprolidine HCL IP - 1.25 mg. In this case, cough syrup containing codeine phosphate has been recovered from the possession of this petitioner and the concentration of the codeine in this drug is less than 2.5% as provided in the above notification. The Hon'ble court also observes in order dated 18.02.2026 passed in Criminal Miscellaneous 12368 of 2026(2) that 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 the 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. The petitioner has been in custody since 21.06.2026.
7. In the facts and circumstances as stated above, and in light of the order of the Hon'ble High Court, the instant regular bail petition filed on behalf of the petitioner namely **Sunil Kumar Choudhary** is hereby **allowed**. The petitioner is directed to be released on furnishing bail bond of Rs. 10,000/- with two sureties of like amount each with an undertaking under Section 480(3) of the BNSS subject to the satisfaction of the Learned Jurisdictional Court with a further condition that he will not involve in the offence of similar nature in future.
8. It is made clear that this order has no bearing on the merits of the case.
9. Let a copy of this order be sent to the concerned Jurisdictional Court.
10. Let this case record be deposited in the Record Room, Civil Court, Darbhanga after all due diligence.

(Neeraj Kumar - II)
Addl. Sessions Judge-I
Darbhanga
20.07.2026

Date of Order	20.07.2026
Date of Reserving Order	20.07.2026
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