



2026:AHC:22681

Judgement Reserved On : 19.12.2025

Judgement Delivered On : 03.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 39486 of 2025

Abdul Qadir And Another

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Lalit Kumar, Zafeer Ahmad
Counsel for Opposite Party(s)	:	G.A.

Court No. - 68

HON'BLE ASHUTOSH SRIVASTAVA, J.

Heard Sri S. B. Singh, learned counsel assisted by Sri Zafeer Ahmad, learned counsel for the applicants as also Sri Anoop Trivedi, learned Additional Advocate General assisted by Sri Paritosh Kumar Malviya, learned AGA-1 and Sri Nitesh Kumar Srivastava, learned AGA for the State and perused the records.

The instant bail application under Section 483 of the BNSS, 2023 has been filed seeking the enlargement on bail in Case Crime No. 153 of 2025, under Sections 8/21 of NDPS Act, 1985 and Sections 318(4), 338, 336(3) and 340 BNS, 2023, Police Station Kotwali, District Rampur during the pendency of the trial before the court below. The bail application of the applicants before the court below was rejected by Additional Sessions Judge, Court No. 4, (NDPS Act) Rampur, vide order dated 17.10.2025 and the applicants are incarcerated in jail since 08.09.2025.

Both the above applicants have been charged under the aforementioned sections on the strength of the recovery memo whereby and where-under 119 boxes containing 11885 bottles of Syrup CODECTUS TR (TRIPROLIDINE HYDROCHLORIDE CODEINE PHOSPHATE SYRUP), two fake Aadhar Card is stated to have been recovered from the applicants when they were loading the said boxes in a Car. The boxes are stated to have been stocked in the house of one co-accused Anees from where the boxes

were being loaded. The co-accused Anees is stated to have run away in a Swift Car while the applicants were apprehended from the spot. The wife of Anees namely Gulfisha is also alleged to be involved in the commission of the crime. The seized material was accounted for in Form 16. Samples of the Syrup would be sent to Lucknow for lab testing on Form 17/17A and 18 where-after case under the Drugs and Cosmetics Act, 1940 would be filed. The rest of the recovered boxes were seized on the spot and sealed. Two syrup each for sample and testing was obtained.

In the above backdrop, learned counsel for the applicants vehemently submit that both the applicants are entirely innocent and have been falsely implicated in this very case for ulterior motives. It is submitted that the Applicant No. 2, Ahsan Noori is the Proprietor of Azad Surgical and Medical Agency, Mohammad Rasulpur (Naugaza) Swar Rampur. The Applicant No. 2 has been issued a License No. UP2220B000514 and UP221B000511, issued on 1st September, 2025 and valid upto 31st August 2028 and as such is licensed to deal in bulk medicine. The boxes containing the alleged CODECTUS TR SYRUP was ordered under invoice which have been brought on record. It is argued that the Applicant No. 2 being a licensee is well within his rights to deal with the Syrup being a wholesaler and culpability cannot be fastened upon him. It is also submitted that the Applicant No. 1, Abdul Qadir has been roped in as he is a relative of the Applicant No. 2, who happened to be on the spot. No fake Aadhar Cards have been recovered nor have been used by the applicants. It is also argued that admittedly the samples have been taken by the Drug Inspector, who has no authority to obtain or prepare sample seals. It is also argued that there is no violation of the provisions of the NDPS Act or the BNS as alleged which may justify the prosecution of the applicants. The applicants have no criminal antecedents.

Sri S. B. Singh, learned counsel for the applicants has further argued that in fact the prosecution of the applicants under the provisions of the NDPS Act cannot be proceeded with. Elaborating his arguments further learned counsel for the applicant has invited the attention of the Court to Sections 8 of the NDPS Act (Sub Clause 'c' in particular) to submit that Section 8 provides for prohibition of certain operations and Sub Clause 'c' thereof provides for certain exceptions in respect of Narcotic Drug or Psychotropic Substance

used for medical or scientific purposes, which may be permitted by issuance of license permits and authorizations. Since in the case at hand license has been issued and is valid, no offence can be said to be made out against the applicants. Attention of the Court has also been invited to Sections 2(viii-a) (Essential Narcotic Drug), 2(xi) (Manufactured Drug), 2(xvi) (Opium Derivative) Sections 21 and 22 of the NDPS Act (which relates to punishment for contravention in relation to manufactured drugs and preparations) and Section 22 (which relates to punishment for contravention in relation to psychotropic substances).

Learned counsel has also placed much reliance upon a Notification issued by the Government of India, numbered as 'SO. 826(E) dated 14.11.1985 issued in terms of Section 2(xi) of the NDPS Act, Clause 35 thereof in particular to submit that Codeine (Scientific name Methyl Morphine) would be a manufactured drug but for it being compounded with one or more ingredients and containing not more than 100 milligrams of the drug per dosage unit. The submission would be clear from Clause 35 of the notification dated 14.11.1985 being reproduced hereunder:-

"Methyl morphine (commonly known as 'Codeine') and Ethyl 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."

It has been sought to be argued that since the Syrup in question i.e. CODECTUS TR (TRIPROLIDINE HYDROCHLORIDE CODEINE PHOSPHATE SYRUP) is having dilutions and preparations with other compounds and content of Codeine is not more than 100 mg per dosage, it cannot be said to be 'manufactured drug' and thus would not attract the provisions of the NDPS Act. Reliance has been placed upon a Division Bench decision of this Court dated 24.12.2021 in the case of **Vibhor Rana vs. Union of India and Another**) reported in **2021 SCC Online All 908**.

Learned counsel for the applicants have further argued that no chemical examination of the seized syrup has been done so as to determine the extent of Codeine present and no report has been obtained. The samples taken are

not of the same lot and thus are not the representative samples. Further there is no finding recorded as regards the reasons to believe that the applicants are guilty of the offence alleged. Reliance in this regard has been placed upon a decision of the High Court of J&K in the case of **Touseef Ahmad Khan Vs. Union Territory of Jammu and Kashmir** reported in **2025 LawSuit (J&K) 29**. On the question of taking of samples reliance has been placed upon the decision of the High Court of Jammu & Kashmir and Laddakh at Jammu rendered in the case of **Zahoor Ahmad and & 2 others Vs. Union Territory of J&K through Drug Inspector Kathua [CRM(M) No.839/2022]** decided on 17.11.2025.

In conclusion, learned counsel for the applicants submits that the seized syrup containing the narcotic Codeine (Methyl Morphine) is not a narcotic drug, and falls within the exception to Entry 35 of the Notification dated 14.11.1985 issued by the Government of India containing the list of Narcotic Drugs on the ground of it being 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. Dealing with the seized Syrup could not be subject to the provisions of the NDPS Act and consequently the prosecution of the applicants in the present case crime number is nothing but an abuse of the process of law and the applicants are liable to be released on bail. Hence bail has been prayed for.

Per contra, Sri Anoop Trivedi, learned Additional Advocate General along with Sri Paritosh Kumar Malviya and Sri Nitesh Kumar Srivastava, learned counsels has vehemently opposed the bail plea by submitting that the large consignment of 11885 bottles of Codectus TR Syrup contained in 119 boxes were seized from the house of Anees situate at Moori Gate, Police Station Kotwali Rampur and not from the premise situated at Farhat Ali Market, Mohalla Rasoolpur (Nogaja) Suar, Rampur UP244924 for which the license has been issued to Azad Surgical and Medical Agency (Proprietor Ahsan Noori) to sell, stock or exhibit or offer for sale or distribute by wholesaler and as such there is a clear violation of the terms of the license. Further, it is submitted that even if it is assumed that the applicants were dealing with the Codeine based cough syrup under a valid license dealing in such huge quantity was a clear violation of notification dated 15.08.2022 issued by the

Commissioner, Food Safety and Drugs which provided the maximum limit for storage by Company Depot/CNF Agents, the wholesaler and retailers. According to the said Notification, wholesaler could stock Codeine based Cough Syrup maximum 1000 bottles each of 100ml and 50ml each and could sell maximum 100 bottles of 100ml or 50ml in one day. In the case at hand the stocks seized is 11885 bottles far above the authorized quantity. It is argued that the exception contained in Section 8(C) of the NDPS Act as also the Notification dated 14.11.1985 of the Government of India as argued by the counsel for the applicants is not attracted to the case at hand.

Sri Anoop Trivedi, learned Additional Advocate General has also addressed the Court on the growing public concern of trafficking and abuse of pharmaceuticals like Codeine, Buprenorphine, Alprazolam, Diazepam, Nitrozepam, Cyproheptadine, Dexamethazone Spasmoproxixon Capsules and many other similar drugs, psychotropic substances in the State of U.P. and the adjoining States. He submits that Codeine is a narcotic drug and causes addiction when used in large quantity over a period of time. Such pharmaceuticals containing the narcotic drug are becoming cheap and easily available substitutes for drugs. The codeine in the cough syrup seized can hardly be said to be used for medical or scientific purposes and such abuse is liable to be curbed.

Sri Anoop Trivedi, learned Additional Advocate General, lastly submits that the arguments raised by the learned counsel for the applicants before this Court were also raised before a Division Bench of this Court in a Bunch of Writ Petitions leading amongst them being **Criminal Misc. Writ Petition No. 27966 of 2025 (Birendra Lal Vema & 4 others Vs. State of U.P. & 3 others)** decided on 19th December, 2025. The writ petitions were filed challenging the FIRs lodged against the writ petitioners giving rise to various Case Crime Numbers under the Penal provisions of the NDPS Act and BNS and similar sections under which the present applicants are being prosecuted. The writ petitions have been dismissed. Sri Trivedi thus submits that the bail plea of the applicants deserves to be out-rightly rejected.

I have heard the learned counsel for the parties and have perused the records. The offence alleged in the FIR is illegal diversion and trafficking of 'Codeine Cough Syrup'. Codeine is included in the definition of 'Opium

Derivatives' under Clause (xvi) of Section 2 of the NDPS Act. 'Opium Derivates' have been included in the definition of manufacture drugs under Clause (xi)(a) of Section 2 of the NDPS Act. Definition of 'Narcotic Drug' is inclusive of all manufactured drugs as visualized under Section 2(xiv) of the NDPS Act. It is not in dispute that the small/commercial quantity of 'Codeine specified as a Narcotic Drug/Psychotropic Substance is 10mg and 1kg respectively.

The contention of learned counsel for the applicant based upon the Central Government Notification dated 14.11.1985 (referred to herein before) that Codeine based Cough Syrup is not a Narcotic Drug and thus the provisions of the NDPS Act are not attracted in the opinion of the Court is misplaced. A bare perusal of the Notification would reveal that 'Codeine' (Methyl-Morphine) and its salts all dilutions and preparations have been listed as manufactured drug at Item No. 35 of the said Notification. However, an exception has been granted excluding those salts, dilutions and preparations subject to satisfaction of two conditions mentioned in the Notification i.e. the first being 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 the second being which have been established in Therapeutic practice.

In the opinion of the Court the exemption provisions are required to be strictly and literally complied with and further that the conditions under which the exemption is granted is strictly adhered to. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. If the exemption is available on complying with certain conditions the conditions have to be complied with exactly. Any violation of any condition would disentitle the claimant the exemption. In the instant case the possession of huge quantity of illegally diverted Codeine based Cough Syrup has been recovered and thus the condition 'established in therapeutic practice' is flagrantly violated denying the applicants of the exemption.

The Apex Court in the case of **Mohd. Sahabuddin and others Vs. State of Assam** reported in **2012(13) SCC 491** wherein the question of

transportation, manufacture, use etc of 'Codeine Phosphate came up for discussion, observed as under:-

"9. At the very outset, the abovesaid submission of the learned counsel is liable to be rejected, inasmuch as, the conduct of the appellants in having transported huge quantity of 347 cartons containing 100 bottles in each carton of 100 ml. Phensedyl cough syrup and 102 cartons, each carton containing 100 bottles of 100 ml. Recodex cough syrup without valid documents for such transportation cannot be heard to state that he was not expected to fulfill any of the statutory requirements either under the provisions of Drugs & Cosmetics Act or under the provisions of the N.D.P.S. Act.

10. It is not in dispute that each 100 ml. bottle of Phensedyl cough syrup contained 183.15 to 189.85 mg. of codeine phosphate and the each 100 ml. bottle of Recodex cough syrup contained 182.73 mg. of codeine phosphate. When the appellants were not in a position to explain as to whom the supply was meant either for distribution or for any licensed dealer dealing with pharmaceutical products and in the absence of any other valid explanation for effecting the transportation of such a huge quantity of the cough syrup which contained the narcotic substance of codeine phosphate beyond the prescribed limit, the application for grant of bail cannot be considered based on the above submissions made on behalf of the appellants.

11. The submission of the learned counsel for the appellants was that the content of the codeine phosphate in each 100 ml. bottle if related to the permissible dosage, namely, 5 ml. would only result in less than 10 mg. of codeine phosphate thereby would fall within the permissible limit as stipulated in the Notifications dated 14.11.1985 and 29.1.1993. As rightly held by the High Court, the said contention should have satisfied the twin conditions, namely, that the contents of the narcotic substance should not be more than 100 mg. of codeine, per dose unit and with a concentration of not more than 2.5% in undivided preparation apart from the other condition, namely, that it should be only for therapeutic practice. Therapeutic practice as per dictionary meaning means 'contributing to cure of disease'. In other words, the assessment of codeine content on

dosage basis can only be made only when the cough syrup is definitely kept or transported which is exclusively meant for its usage for curing a disease and as an action of remedial agent.

12. As pointed out by us earlier, since the appellants had no documents in their possession to disclose as to for what purpose such a huge quantity of Schedule 'H' drug containing narcotic substance was being transported and that too stealthily, it cannot be simply presumed that such transportation was for therapeutic practice as mentioned in the Notifications dated 14.11.1985 and 29.1.1993. Therefore, if the said requirement meant for therapeutic practice is not satisfied then in the event of the entire 100 ml. content of the cough syrup containing the prohibited quantity of codeine phosphate is meant for human consumption, the same would certainly fall within the penal provisions of the N.D.P.S. Act calling for appropriate punishment to be inflicted upon the appellants. Therefore, the appellants' failure to establish the specific conditions required to be satisfied under the above referred to notifications, the application of the exemption provided under the said notifications in order to consider the appellants' application for bail by the Courts below does not arise".

Further, a perusal of the NDPS Rules, 1985 would show that Chapter V-A has been inserted which deals with Possession, Transport, Import Inter-State, Export Inter-State Sale, Purchase, Consumption and use of Essential Narcotic Drugs. Codeine (Methyl) its salts, all dilutions and all preparations have been notified as an 'essential narcotic drug' under Central Government Notification dated 05.05.2015.

The Apex Court in **Union of India Vs. Sanjeev Deshpande** reported in **2014(3) SCC 1** held as under:-

"25. In other words, DEALING IN narcotic drugs and psychotropic substances is permissible only when such DEALING is for medical purposes or scientific purposes. Further, the mere fact that the DEALING IN narcotic drugs and psychotropic substances is for a medical or scientific purpose does not by itself lift the embargo created under section 8(c). Such a dealing must be in the manner and extent provided by the

provisions of the Act, Rules or Orders made thereunder. Sections 9[9] and 10[10] enable the Central and the State Governments respectively to make rules permitting and regulating various aspects (contemplated under Section 8(c), of DEALING IN narcotic drugs and psychotropic substances."

The reliance upon the Division Bench judgment rendered in the case of **Vibhor Rana and another Vs. Union of India**, reported in **2021 SCC Online All 908** by learned counsel for the applicants is also misplaced inasmuch as recently a Division Bench of this Court in **Criminal Misc. Writ Petition No. 27966 of 2025 (Birendra Lal Verma and 4 others Vs. State of U.P. and 3 others)** has repelled the challenge which was laid to the FIRs raising the same grounds as urged in the case of Vibhor Rana (Supra) and before this Court to press the bail plea. Further the Delhi High Court in **Mohd. Ahshan Vs. Customs (MANU/DE/3495/2022)**, The Jammu and Kashmir and Laddakh High Court in **Azhar Javaid Rather Vs. Union Territory of Jammu and Kashmir [J&K(MANU/JK/0274/2023]**, The Calcutta High Court in **Ramraj Choudhary Vs. The State of West Bengal (MANU/WB/1741/2022)** have distinguished the judgment in the case of Vibhor Rana (Supra). Even otherwise, in the opinion of the Court the law laid down by the Apex Court discussed herein above squarely covers the issue.

Prima-facie, I find that the prosecution of the applicants under Sections 8/21 of NDPS Act and 318(4), 338, 336(3), 340 BNS is justified. The case law cited by learned counsel for the applicants particularly the case of **Vibhor Rana (Supra)** is clearly distinguishable.

In the light of the facts and circumstances of the present case, as also taking note of the fact that seizure of 11885 bottles of the cough syrup being much above the commercial quantity in view of the law laid down by the Apex Court in **Hira Singh & others Vs. Union of India and others [2020(20)SCC 272]** the rigors of Section 37 of the NDPS Act being clearly attracted, the perusal of the evidences, collected during investigation so far, prima-facie, the involvement of the accused persons in the present case cannot be ruled out. No reason is found to falsely implicate the applicant/accused persons. Therefore, there is no good ground to release the

applicant-accused persons on bail at this stage. All the contentions raised by the learned counsel for the applicant pertain to the merits of the case and the same cannot be considered while considering application for grant of bail. This court is unable to form an opinion at this stage that the accused persons have not committed an offence.

In the ultimate conclusion, considering the facts and circumstances of the case, gravity of the offence, severity of punishment, in my opinion, no case for bail is made out. Accordingly, the bail application is hereby **rejected**.

It is clarified that the observations made regarding the bail application is limited to the decision of the bail application and any observations made herein shall not effect the trial of the case.

(Ashutosh Srivastava,J.)

February 3, 2026

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