IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE B. P. SHARMA

ON THE 16th OF NOVEMBER, 2026

MISC. CRIMINAL CASE No. 43742 of 2026

CNR No.: MPHC010655502026

AMAR YADAV

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Ms. Smita Varma - Advocate for applicant.

Shri N.S. Solanki - Panel Lawyer for respondent/State.

ORDER

This is the second bail application filed by the applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking regular bail in connection with Crime No.399/2026 registered at Police Station City Kotwali, District Satna for offences punishable under Sections 8(b), 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 5/13 of the M.P. Drug Control Act. His earlier bail application, M.Cr.C. No.24232/2026, was dismissed as withdrawn on 23.07.2026.

2. The prosecution case, in brief, is that on 27.04.2026, the police received information that the applicant was standing near Jamuna Colony ground, Satna, carrying cough syrup for sale. Acting upon the information, the police reached the spot and allegedly recovered 20 bottles of Onrex cough syrup, each containing 100 ml, from the possession of the applicant. The cough syrup contained codeine phosphate. Accordingly, the applicant was arrested and, after completion of

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investigation, the charge-sheet was filed before the competent Court.

3. Learned counsel for the applicant submits that the applicant has been falsely implicated and no contraband was recovered from his possession. Both the independent seizure witnesses, Dheerendra Sen (PW-1) and Suneet Jaiswal (PW-2), have not supported the prosecution case and have denied the alleged recovery in their presence. It is further submitted that the police did not record the search and seizure through audio-video means as required under Section 105 of the BNSS and that Section 52-A of the NDPS Act has also not been properly complied with. It is argued that the seized cough syrup is a medicinal preparation and does not attract the provisions of the NDPS Act and, in any case, the quantity does not fall within commercial quantity. In support of his submissions, reliance has been placed on the judgments in ***Jagdish v. State of M.P. (2003) 9 SCC 159***, wherein the Supreme Court set aside the conviction as the independent witnesses did not support the recovery and the official evidence was unreliable; ***Dilip and Another v. State of M.P. (2007) 1 SCC 450***, wherein the Supreme Court considered non-compliance with search provisions and unreliable seizure evidence; ***Sanjeet Kumar Singh alias Munna Kumar Singh v. State of Chhattisgarh 2022 LiveLaw (SC) 724***, wherein it was held that recovery must first be established before drawing the presumption under Section 54 of the NDPS Act and that the evidence requires careful scrutiny when independent witnesses turn hostile; ***Iqbal Singh v. State AIR ONLINE 2020 DEL 1093*** and ***Bharat Kumar v. State of Bihar CrMC No.60727/2026 (Patna High Court)*** wherein bail was granted in a case involving Onrex cough syrup containing codeine phosphate, considering the medicinal nature of the preparation and the applicable exemption. It is therefore prayed that the applicant be enlarged on bail.

4. *Per contra*, learned counsel for the State opposes the bail application and submits that 20 bottles of Onrex cough syrup containing codeine phosphate have been recovered from the possession of the applicant, which constitute commercial quantity

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under the NDPS Act. The applicant has failed to produce any licence or valid document authorising possession or sale of such cough syrup. It is further submitted that merely because the independent witnesses have turned hostile, the prosecution case cannot be discarded at this stage. The applicant also has 4 criminal antecedents, including an earlier case under the NDPS Act and Drugs and Cosmetics Act. In view of the seriousness of the offence and the statutory restriction under Section 37 of the NDPS Act, the applicant is not entitled to bail.

5. Heard learned counsel for the parties and perused the record. The allegation against the applicant is that 20 bottles of Onerex cough syrup containing codeine phosphate, each of 100 ml, were recovered from his possession. As per Note 4 of the Notification dated 19.10.2001, inserted by Notification dated 18.11.2009 in the schedule under the Act, 1985, for determining small quantity or commercial quantity, the quantity of the entire mixture or preparation is to be considered and not merely the actual content of the narcotic substance. The Supreme Court in ***Hira Singh and Another v. Union of India and Another (2020) 20 SCC 272***, particularly paragraphs 8 to 10, has upheld this principle and established that, when codeine is found in a mixture, solution, or dosage form (such as codeine-based cough syrups like Phensedyl or Onrex), the entire weight of the mixture (including neutral substances and liquid volume) rather than just the pure codeine content alone, is frequently considered when determining whether the quantity reaches a commercial threshold. Thus, the contention that only the codeine content is to be considered for determining the quantity cannot be accepted. The alleged recovery is of commercial quantity.

6. The contention that Onrex cough syrup is a medicinal preparation and does not fall under the NDPS Act also has no force in the facts of the present case. The Supreme Court in ***Mohd. Sahabuddin and Another v. State of Assam (2012) 13 SCC 491*** has held that unlicensed transportation of huge quantities of codeine-based cough syrup without valid documents falls under the penal provisions of the NDPS Act,

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1985, and cannot be exempted merely because the product is a pharmaceutical preparation. A similar view has been taken in ***Rashid Sk. v. State of West Bengal C.R.M. 9230 of 2017***, whereby the Calcutta High Court ruled that illicit possession of codeine-based Phensedyl cough syrup attracts the penal provisions of the NDPS Act, 1985, despite its status under the Drugs and Cosmetics Act, 1940. Due to the seizure of a commercial quantity, the petitioner's bail was denied under Section 37 of the NDPS Act. In the present case, the applicant is not a licence holder and has not produced any valid document justifying possession of the seized cough syrup. Therefore, the principles laid down in *Mohd. Sahabuddin(supra)* are applicable to the present case.

7. So far as the judgments relied upon by the applicant are concerned, the same are distinguishable on facts. Merely because two independent seizure witnesses have not supported the prosecution case, the alleged recovery cannot be disbelieved at the stage of consideration of bail without examining the remaining prosecution evidence. The effect of their depositions and the alleged procedural irregularities shall be considered by the trial Court during trial. Having considered the material available in the case diary, *prima facie* involvement of the applicant in possession of commercial quantity of Onrex cough syrup containing codeine phosphate cannot be ruled out. The applicant has failed to satisfy the twin conditions prescribed under Section 37 of the NDPS Act. Therefore, this Court is not inclined to grant bail to the applicant.

8. Accordingly, the second bail application filed by the applicant under Section 483 of the BNSS is hereby ***dismissed***.

(B. P. SHARMA)
JUDGE

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