

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.1430 of 2024**

Arising Out of PS. Case No.-559 Year-2024 Thana- Excise P.S. District- Kishanganj

Narendra Kumar Ram Son Of Late Ramayan Ram Village- Chetan Chapra,  
Ps- Baniyapur, Dist- Chapra , Saran

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Sect. Excise Commr. Cum Inspector General Of Registration, Bihar The State Of Bihar Through The Sect. Excise Commr. Cum Inspector General Of Registration, Govt. Of Bihar, New Secretariat, Patna
2. The Sectr. Excise Commr. Cum Inspector General Of Registration, Govt. Of Bihar, New Secretariat Patna, Bihar
3. The District Magistrate, Dist- Kishanganj At Kishanganj Bihar
4. The Superintendent Of Police, Kishanganj Bihar
5. The Station House Officer, Kishanganj Ps, Kishanganj Bihar
6. The Inspector, Excise PS, Kishanganj Bihar

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Shivesh Sinha, Advocate  
Mr. Piyush Parasar, Advocate  
Ms. Meghali Diksha, Advocate  
Mr. Amrit Kumar, Advocate  
Mr. Rabi Bhushan Prasad, Advocate  
For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG-13

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL ORDER**

- 2      13-02-2025      1. This Criminal Writ has been preferred for quashing of Excise Police Station Case No. 559 of 2024 (Special Case No. 572 of 2024), dated 02.05.2024, registered for the offences punishable under Section 37 of the Bihar Prohibition and Excise Act, 2016.
2. The factual matrix of this case is that the petitioner was allegedly found in an inebriated state at his temporary



residence in Kishanganj on 02.05.2024, based on a breath analyzer test conducted by an excise team. He was immediately arrested and an F.I.R. was registered against him, which is currently pending before the Additional District and Sessions Judge-IV cum Special Judge-2 (Excise), Kishanganj.

3. The learned counsel for the petitioner submits that the entire prosecution case is based solely on the breath analyzer test, which cannot be a conclusive proof of consumption of alcohol. He further submits that no confirmatory blood or urine test was conducted, which is mandatory under law.

4. In *Bachubhai Hassanalli Karyani v. State of Maharashtra*, reported in *1971(3)SCC930*, the Hon'ble Supreme Court held that no conclusion with regard to consumption of alcohol by a person can be made on the facts that the appellant's breathe was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. Consumption of alcohol can only be ascertained by way of blood and urine test by a person suspected to have consumed alcohol.

5. In the instant case, there is also no allegation that at the time of arrest the gait of the original petitioner was unsteady, he was speaking incoherently or that his pupils were dilated.



6. In the above-stated report, the Hon'ble Supreme Court found that the blood and urine examination of the appellant was not done and finally held that mere smelling of alcohol is not enough to hold that the petitioner consumed alcohol on the date of his apprehension.

7. At this stage, learned counsel for the petitioner submits that the petitioner had visited Electro Homeopathy Institute, Patna on 16.04.2024 for stomach infection treatment, where he was prescribed liquid homeopathic medicines containing alcohol-based solvent. This could have led to the blood alcohol concentration reading of 41/mg/100 ml. in the breath analyzer test, but no further medical examination was conducted to establish the possibility of consumption of alcohol.

8. The learned counsel for the petitioner further submits that the F.I.R. and subsequent disciplinary action were initiated due to professional vendetta. The District Magistrate, Kishanganj directed for registration of the F.I.R. and personally pushed the case for departmental action, including suspension, which shows mala fide intent. The petitioner had earlier returned certain financial bills submitted by the Drawing and Disbursing Officer (DDO), Kishanganj, citing procedural errors, which might have triggered retaliatory action against him.



9. The learned counsel for the petitioner further submits that the criminal case and subsequent departmental action violate his fundamental rights under Articles 14 and 21 of the Constitution of India. The prosecution is based on arbitrary action, without following proper legal procedures, and the suspension without concrete evidence is also not acceptable in the eyes of law.

10. The learned counsel for the State, on the other hand, submits that the petitioner was found in an inebriated condition at his residence with a breath analyzer test, confirming alcohol consumption of 41 mg./100 ml. The Bihar Prohibition and Excise Act, 2016 prohibits alcohol consumption in any form and government servants are specifically barred under Rule 4 of the Bihar Government Servants Conduct Rules, 1976. He further contends that the case was registered lawfully, the breath analyzer test was accurate and no procedural irregularities occurred. The petitioner's claim of *mala fide* action are baseless and an attempt to evade legal consequences.

11. Having heard the learned counsels for the petitioner and the State and taking into consideration the entire materials placed on record, this Court has no other alternative but to hold that the authorities failed to consider the observation



of the Hon'ble Supreme Court, and based on breath analyzer report, which cannot be said to be a conclusive proof of consumption of alcohol, F.I.R. has been registered.

12. For the reasons stated above, the Excise Police Station Case No. 559 of 2024 (Special Case No. 572 of 2024), dated 02.05.2024, registered for the offences punishable under Section 37 of the Bihar Prohibition and Excise Act, 2016, is, hereby, quashed.

13. The instant writ petition is, accordingly, allowed.

**(Bibek Chaudhuri, J)**

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