

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.8900 of 2016

Arising Out of PS.Case No. -513 Year- 2015 Thana -SIKARPUR District-
WESTCHAMPARAN(BETTIAH)

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1. Avinash Kumar son of Shiv Prasad, R/o Mohalla- Pandey Tola, Ward
No. 23, P.S.- Shikarpur, District- West Champaran at Bettiah

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Upadhyay Saurabh Kumar

For the Opposite Party/s : Mr. Nirmal Kumar Sinha(App)

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

2 02-03-2016 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

Petitioner apprehends arrest in connection with
Shikarpur P.S. Case No. 513 of 2015 for offences alleged under
Sections 27(b) (ii) /27(d) of the Drugs and Cosmetics Act, 1940.

The prosecution case is that the Drug Inspector Md.
Tanveer Alam, had filed a written complaint before the SHO
Shikarpur, Police Station that on 15.12.2015 on basis of the Letter
No. 7851 dated 01.12.2015 issued by the Chief Secretary, Health
Department, Bihar, Patna and on basis of Memo No. DHS/927
dated 04.12.2015 issued by the District Magistrate, Bettiah he
along with other officials conducted unannounced/surprise
inspection of the unauthorized medicine shop of the petitioner and

found various drugs and seized 112 types of medicines sealed the shop and a seizure list was prepared.

It has been submitted by the learned counsel for the petitioner that prosecution against the petitioner has been initiated on the basis of an FIR registered under the Drugs and Cosmetics Act. Learned counsel for the petitioner fairly submits that the initiation of the FIR against the petitioner is wholly misconceived since Section 32 of the Drugs and Cosmetics Act 1940 provides that no prosecution shall be instituted for any offence under the Act except by a Drug Inspector or by the person aggrieved or by recognized consumer association whether such person is a member of the association or not. Prosecution can be instituted by the Drug Inspector or any person aggrieved by filing complaint before a competent Court and the police has no jurisdiction to register FIR and investigate the offence under the act. He has placed reliance on a judgment passed by this Court since reported in 1997(1) BLJ 899 in the case of Hindustan Labour Limited Vs. State of Bihar and others and as also held by a Co-ordinate Bench of this Court in Criminal Misc. No. 17737 of 2015 dated 21.9.2015.

However learned A.P.P. for the State opposes the prayer for bail.



Considering the fact that the petitioner is carrying on business since a long time and because the proceeding has not been initiated in accordance with the provision of the Drugs and Cosmetics Act, let the petitioner above named in the event of his arrest or surrender before the learned court below within a period of eight weeks from today be released on bail on furnishing bail bonds of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, West Champaran at Bettiah in connection with Shikarpur P.S. Case No. 513 of 2015 subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

This order is passed without being prejudiced to the rights of the concerned prosecuting agency who may initiate proper proceedings in accordance with law.

(Nilu Agrawal, J)

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