

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36304 of 2018

Arising Out of PS.Case No. -9 Year- 2018 Thana -KADAMKUAN District- PATNA

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Sunil Kumar, son of Late Sarju Prasad Gupta, resident of Arya Kumar Road, P.S.- Kadamkuan, District- Patna.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ram Shankar Das, Advocate

For the Opposite Party/s : Mr. Ram Bilash Roy Raman, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

2 05-07-2018 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks pre-arrest bail in connection with Kadam Kuan P.S. Case No.09 of 2018 registered under Sections 419, 420, 467, 468, 274, 275, 276 and 120B of the Indian Penal Code and Sections 22(3), 27(b), 27(c), 28, 28A, 28B and 27(d) of the Drugs and Cosmetics Act.

It is submitted by the learned counsel for the petitioners that the petitioner is a licence holder and no illegality has been pointed out by the informant of the case in manufacturing of Oxytocin injection. The very institution of the first information report in the instant case is without jurisdiction as the first information report cannot be registered under the Drugs and



Cosmetics Act, 1940. The police have no power to investigate such cases registered under the Drugs and Cosmetics Act and submit a report under Section 173(2) of the Code of Criminal Procedure. In support of his submission, he placed reliance on the decisions of this Court in **Hindustan Lever Ltd. vs. State of Bihar and Ors [1997 BLJ 899]**, unreported judgment passed by a Division Bench in **Om Prakash Sah vs. State of Bihar (Cr. Misc. No.808 of 1998)** and **M/s Torque Pharmaceuticals Pvt. Ltd. and Anrs. vs. State of Bihar and Ors. [(2015) 3 PLJR 660]**.

Per contra, learned counsel for the State submitted that there is allegation in the first information report that the petitioner did not co-operate when the Drug Inspector went to investigate his premises where manufacturing process of unregistered oxytocin injection was going on. He submitted that as far as the question of maintainability of the first information report is concerned, the matter is under consideration before a Full Bench of this Court as the Division Bench of this Court has referred the matter doubting the decisions given earlier in **Hindustan Lever Ltd. vs. State of Bihar and Ors** (supra) and **Om Prakash Sah vs. State of Bihar** (supra).

Be that as it may, Considering the facts and



circumstances of the case, in the event of arrest or surrender in the court below within six weeks from today, the petitioner is directed to be released on bail on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Sub-Judge-VII-cum-Additional Chief Judicial Magistrate, Patna in connection with Kadam Kuan P.S. Case No.09 of 2018, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

(Ashwani Kumar Singh, J)

Md.S./-

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