

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9511 of 2020

Arising Out of PS. Case No.-872 Year-2019 Thana- ARARIA District- Araria

Raushan Kumar Gender: Male, aged about 30 years Son of Shri Laxman Bhagat, Resident of Village: Chanderdei, P.S. Araria, District: Araria.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kuamr Ravish

For the Opposite Party/s : Mr.Akhileshwar Dayal

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 04-03-2020 Heard Mr. Kumar Ravish, learned counsel appearing
for the petitioner.

The petitioner apprehends his arrest in connection with Araria R.S. Police Station Case No. 872 of 2019 lodged by S.H.O. Araria (R.S.) P.S. on the basis of the written report submitted by Drug Inspector, Araria under Section 27(b) / 28 of the Drugs & Cosmetics Act, 1940 (hereinafter referred to as “the Act”).

The allegation against the petitioner as per the First Information Report is that the Police on 06.10.2019 inspected the drug store run by the petitioner and recovered 19 liters of cough syrup mixed with codeine for which a separate F.I.R. being Araria (R.S.) Police Station Case No. 862 of 2019 was lodged under Section 30(a) / 36 of the Bihar Prohibition and



Excise Act , 2016 and petitioner was arrested. Subsequently, on the basis of the written report of the Drug Inspector dated 11.10.2019 while the petitioner was in jail, M/s Roshan Medical Store run by the petitioner was again raided by the Drug Inspector and it has been alleged that the petitioner was running the medical store without having any valid license.

Learned counsel for the petitioner submits that *prima facie* the prosecution lodged against the petitioner is not maintainable inasmuch as the Division Bench of this Hon'ble Court in CR.WJC No. 719 of 1998 by its order dated 21.01.2011 has held that on the basis of the F.I.R. lodged by the Police the criminal proceeding can not be initiated and the criminal court is also barred from taking cognizance as provided under Section 32 of the Act. The Hon'ble Court has taken note of the fact that under Section 22 of the Act a complaint case can be filed by the Drug Inspector or the authorized persons and the same cannot be lodged by the Officer - in- charge of a Police Station. Learned counsel further submits that the Division Bench further held that no criminal proceeding can be initiated for any offence relating to contravention of any of the provisions mentioned in Chapter IV of the Act unless it has been initiated by the persons authorized under Section 22 (1) of the



Act by way of filing a complaint. Learned counsel further submits that the judgment of the Division Bench was followed by a Single Bench of this Court in Cr. Misc. No. 20002 of 2014 in its order dated 04.09.2017. Learned counsel further submits that the matter is still pending before the Full Bench led by Cr.WJC No. 887 of 2013 Bablu @ Rajesh Kumar vs The State of Bihar & Ors. Learned counsel further submits that in the present case also F.I.R. has been lodged by the Police Officer alleging contravention of the provision under Chapter IV of the Act and no complaint has been lodged or filed by the Drug Inspector as per the provision of Section 22 read with Section 32 of the Act. Learned counsel further submits that the raid was conducted during the period petitioner was in jail to the knowledge of the Police Officer and others as such, the search and seizure done by the Drug Inspector and his team was not in accordance with law.

After having heard learned counsel for the parties and taking into consideration the fact that *prima facie* it appears that the Division Bench of this Court has held that the prosecution for violation and contravention of the provisions of Chapter IV of the Act can only be initiated by the Drug Inspector and other authorized Officer by filing complaint by Drug Inspector and



authorized Officer and not by the Police Officer, I am inclined to grant anticipatory bail to the petitioner.

Accordingly, let the petitioner, above named, in the event of his arrest or surrender before the Court below within four weeks from the date of receipt of a copy of this order, be released on anticipatory bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Araria in connection with Araria (RS) Police Station Case No. 872 of 2019 , subject to the condition as laid down under Section 438 (2) of the Code Of Criminal Procedure.

(Anil Kumar Sinha, J)

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