

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13831 of 2022

Arising Out of PS. Case No.-211 Year-2021 Thana- TEGHRHA District- Begusarai

KUNAL KUMAR @ CHHOTU SON OF SRI BIRENDRA SINGH
RESIDENT OF VILLAGE - MADURAPUR, DAKSHIN TOLA, POLICE
STATION - TEGHRA, DISTRICT- BEGUSARAI

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Bipin Kumar, Advocate
For the Opposite Party/s :	Mr. Anil Kumar Singh No. 1, A.P.P.
	Mr. Kumar Manish, S.C. V

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 19-09-2022 Heard learned counsel for the petitioner, learned
A.P.P. for the State and learned Standing Counsel No. V.

Let the defect(s), if any, be removed within a period
of four weeks.

The petitioner apprehends his arrest in a case
registered for the offences punishable under Sections 18(A),
18(B), 18(C), 27(b)(II), 28 and 28(A) of the Drugs and
Cosmetics Act, 1940 and 1945.

Learned counsel for the petitioner submits that
petitioner has antecedent of one case under the Excise Act.

The informant alleges that he along with Inspector,
Teghra Police Station on 29.06.2021 came to the residence of
the petitioner and some medicines were recovered from the
house. Further, the neighbour of the petitioner, namely, Jayantu



Singh disclosed to the raiding party that neither the petitioner nor any of his family members have any drug licence for purchasing and selling the seized medicines. Accordingly, the FIR was instituted against the petitioner.

Learned counsel for the petitioner submits that earlier when the matter was taken up a short legal issue had been raised that how an FIR was maintainable in such cases when the Hon'ble Supreme Court in the case of **Union of India Vs. Ashok Kumar Sharma [(2020) SCC OnLine SC 683]** had clearly held that in cases relating to Drugs and Cosmetics Act only complaint is maintainable in view of Section 32 of the Drugs and Cosmetics Act and had further relied on the order of this Court in the case of **Rajesh Kumar Vs. State of Bihar** reported in **2020(4)BLJ 481**.

This Court after hearing learned counsel for the petitioner by order dated 17.05.2022 had directed the Principal Secretary or the Secretary, Health Department, Government of Bihar to file a counter affidavit explaining as to why FIRs are still being registered under the various provisions of the Drugs and Cosmetics Act. Further, Mr. Kumar Manish, learned Standing Counsel, was directed to assist this Court in the matter.

Mr. Kumar Manish, learned Standing Counsel appears



and submits that a counter affidavit was filed earlier and also filed a hard copy of the counter affidavit in Court on behalf of the Joint Secretary, Department of Health, Government of Bihar. Learned Standing Counsel very fairly at the outset submits that since the FIR came to be instituted after the order was passed by the Hon'ble Supreme Court in the case of Union of India Vs. Ashok Kumar Sharma (**supra**), as such, the FIR is not maintainable as Section 32 of the Drugs and Cosmetics Act clearly incorporates that how a case is to be instituted by the authorities designated there. He further submits that only a complaint would lie. Learned Standing Counsel, thus, very fairly submits that liberty be granted to the authorities to file a complaint case and thus for the present is not opposing the anticipatory bail of the petitioner.

Considering the submissions made by the learned Standing Counsel, the petitioner above-named, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs.20,000/- (Rupees Twenty Thousand) with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/successor court in connection with Teghra P.S. Case



No. 211 of 2021, subject to the conditions as laid down under
Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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