

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3191 of 2023

Arising Out of PS. Case No.-65 Year-2021 Thana- BAGHA District- West Champaran

Kishor Singh, son of Late Jagarnath Singh, resident of Village-Chhotakipatti
Bargaon P.S.- Bagaha, Dist-West Champaran, Bettiah

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Lokesh Kumar Singh, Advocate
For the Respondent/s : Mr. Bal Mukund Prasad Sinha, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 25-01-2024

Heard learned counsel for the appellant and learned
counsel for the State.

2. The present appeal has been filed by the
appellant against the order dated 24.05.2023 passed by learned
A.D.J.-II-cum-Special Judge (Excise), Bagaha, West Champaran
in S.Tr. No.3855 of 2022 arising out of Bagaha P.S. Case No.65
of 2021 whereby the learned trial court has rejected the petition
preferred under Section 239 of the Code of Criminal Procedure
(for short 'CrPC').

3. The main contention for raising the discharge
prayer before the learned Trial Court was that as per breathe
analyzer report only .42 per mile alcohol was found, which to be
treated as no alcohol and as such, the charge could not be
framed, as no *prima-facie* case is made out.



4. It is submitted by learned APP that there is no minimum percentage of alcohol or quantity required as to frame charge under Bihar Prohibition and Excise Act, 2016.

5. However, from the submission and from the fact gathered during the course of investigation, it appears that this is not a case where alcohol has not been consumed rather on the basis of percentage it has been disputed.

6. A counter affidavit has been filed on behalf of the respondent-State wherein it has been stated that a charge-sheet against the appellant was filed under Section 45 of the Act apart from Section 37(c) of the Bihar Prohibition and Excise Act.

7. In view of the aforesaid facts and circumstances, the present appeal is being devoid of any merit. Accordingly, it is dismissed.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.01.2024
Transmission Date	25.01.2024

