

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35003 of 2025

Arising Out of PS. Case No.-187 Year-2023 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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Saksham Anand son of Manoj Kumar @ Manoj Kumar Sahu c/o - Balaji Medical Sukhraj Ray Path tilka Manjhi, PS- Brari District -Bhagalpur P/a- Resident of House No. 28 Near Durga Asthan Phulaut, Ps- Phulaut, Dist- Madhepura

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Sinha, Advocate
For the Opposite Party/s : Mr. Sanjay Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

3 20-08-2025 Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner is apprehending arrest in connection with Complaint Case No. 187 of 2023, dated 30.10.2023, lodged under Sections 27(d), 27(c), 36(AC), 27(d), 28 and 28(A) of the Drugs and Cosmetics Act, 1940.

3. It transpires to this Court that it is an official complaint filed by the Drug Inspector against the petitioner, who is alleged to be the proprietor of M/s Balajee Medico, Sukhraj Rai Path, Tilakmanjhi, PS-Barari, District-Bhagalpur, on which cognizance has been taken under Sections 27(d), 27(c), 36(AC), 27(d), 28, and 28(A) of the Drugs and Cosmetics Act, 1940,



against the petitioner, and summons have been issued.

Subsequently, an NBW has also been issued on 18.03.2025.

4. As per the allegations made in the complaint, an inspection was conducted at the shop of the petitioner, namely, M/s Balajee Medico, Sukhraj Rai Path, Tilakmanjhi, PS-Barari, District-Bhagalpur. During the inspection, the registered pharmacist of the medical shop, along with his registration number, was not present. It was found, based on information provided by representatives of the Enforcement of Intellectual Property Rights, that various drugs, namely Clavam 625 Tab, Pan D, and Pan 40, were present at the premises, for which the petitioner-proprietor failed to produce the relevant purchase invoices. Since no purchase invoices or source information were available at the spot, the sale of those medicines was stopped. It was alleged that the said medicines were not up to the standard mark. Accordingly, samples of the said medicines were sealed in the presence of the proprietor and sent to the Government Analyst, RDTL, Guwahati, Assam, for testing. The report of the Government Analyst has been received, which indicates that the sample is not of standard quality. It is for this reason the case has been lodged, in which the petitioner has also been made an accused.



5. Learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence. Counsel further submits that in the year 2008, significant amendments were made to the Drugs and Cosmetics Act, 1940 (23 of 1940), and by virtue of Act No. 26 of 2008, Section 36AC was inserted, according to which the offences under the Act have been made cognizable and non-bailable.

6. It is further submitted that while in some cases the prescribed punishment is less than three years and in others it exceeds three years, the nature of the offence under the amended Act remains cognizable and non-bailable regardless. Therefore, even though certain sections prescribe punishment of less than three years, since the Act is a special legislation, the provisions of the CrPC / BNSS shall not override the special provisions. Accordingly, it is submitted that anticipatory bail is maintainable, despite the fact that the punishment under some sections is less than three years.

7. Counsel further submits that the petitioner is a licensed seller of medicines, holding a valid license to operate, and he sells medicines manufactured by companies that are required to comply with the laws relating to Intellectual Property Rights (IPR) as well as the Drugs and Cosmetics Act



for the manufacturing and sale of drugs. It is submitted that if any drug is found to be not up to the prescribed standard, and it is admittedly stated by the Drug Inspector that the drug in question was in sealed packaging (tablet form), then in such a case, it is the manufacturer or the company responsible for the preparation of the drug who should be held liable under the Drugs and Cosmetics Act.

8. He further submits that, as a licensed retailer, the petitioner is only responsible for the sale of the medicines and not for their manufacturing or quality control. His accountability is limited to compliance with licensing norms, i.e., either he continues operating under the license or his license may be subject to cancellation. He is in no way involved in the manufacturing process or in ensuring the quality standards of the drugs, as every drug is manufactured in accordance with applicable laws, under which the molecule is registered, tested, verified, and approved by specialized government agencies authorized by the Government of India for regulating pharmaceuticals. The petitioner has no role in those processes.

9. Learned APP for the State opposes the prayer for bail of the petitioner and submits that the drug sample in question was sold from the petitioner's shop and was sent, in his



presence, to the Government Analyst. Upon analysis, the sample was found to be not up to the prescribed standard.

10. This Court is of the view that, based on the allegations on which the case has been lodged, it is primarily the manufacturer or the selling company that may be held responsible. It shall be a matter for trial to determine whether the said medicine was sold by the shopkeeper after procuring it from the company, or whether the shopkeeper was himself involved in the manufacturing of the said tablet.

11. *Prima facie*, there is no allegation that the shopkeeper has manufactured the said tablet. As such, this Court finds that, after the 2008 amendment to the Drugs and Cosmetics Act, the legal position has changed, making the offence non-bailable. Cognizance has been taken under Section 36AC, which covers the sections under which the present cognizance has been taken.

12. In the present facts and circumstances of this case, let the above named petitioner be released on anticipatory bail, in the event of arrest or surrender before the Trial Court within a period of 4 weeks from today, on furnishing bail bond of Rs.30,000/- (Rupees Thirty Thousand) as mentioned in Section 2(1)(d) of the BNSS, 2023 to the satisfaction of 1st Additional



District & Sessions Judge cum Special Judge Drug and
Cosmetic, Bhagalpur, in connection with Complaint Case No.
187 of 2023, subject to the conditions as laid down U/s 482(2)
of the BNSS, 2023.

(Dr. Anshuman, J.)

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