

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1692 of 2025

Arising Out of PS. Case No.-1 Year-2020 Thana- PATLIPUTRA District- Patna

Maandhata Mishra S/o- Shri Rajani Kant Mishra R/o- Mahadeopuri
Gardanibagh Ps- Gardanibagh, Dist- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Govt. of Bihar, Patna, Bihar
2. The Principal Secretary, Prohibition, Excise and Registration Dept. Bihar
3. The Superintendent of Police, Patna, Bihar
4. The Officer in Charge, Patliputra, Patna, Bihar
5. The Assistant Sub Inspector of Police, Patliputra, Patna, Bihar
6. The Investigation officer, Patliputra, Patna, Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Gopal Prasad Roy, Advocate
For the Respondent/s : G.A. 5

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 16-09-2025

Heard learned counsel for the petitioner as well as
learned counsel for the State-respondents.

02. The present writ petition has been filed for
quashing the FIR bearing Patliputra P.S. Case No. 01 of 2020
dated 01.01.2020 instituted against the petitioner under Section
37(b) of the Bihar Prohibition and Excise Act (hereinafter ‘the
Act’).

03. From the record it appears Patliputra P.S. Case
No. 01 of 2020 was instituted with the allegation against the

petitioner that during a patrolling, the informant found a traffic jam near Sai Mandir. When the informant started removing this jam, the petitioner who was passing from the road was found to be smelling of alcohol and he was apprehended. From breath analyzer test it came to the notice that alcohol content in his breath was 9.1 mg/100ml.

04. Learned counsel for the petitioner submits that the FIR against the petitioner has been registered solely on the ground that the police had suspicion about petitioner consuming alcohol and the petitioner was subjected to breath analyzer test and its reading showed 9.1 mg/100ml of alcohol content in the breath of the petitioner. But institution of FIR merely on the basis of breath analyzer test would not lead to any conviction. The police did not conduct any blood or urine test of the petitioner for confirmation of consumption of alcohol despite taking the petitioner in custody. The petitioner did not display any behavior such as slurred speech, unsteady gait or any kind of behavior which could be labelled as drunken condition. Further the petitioner, like a lawful citizen, underwent breath analysis test, and cooperated with police. So no adverse inference can be drawn in terms of Section 75 of the Excise Act. Since no sample of blood or urine was taken for test, the

ongoing prosecution on the basis of sole report of breath analysis test is an abuse of the process of law and on the basis of the same, the petitioner cannot be held guilty of offences under Section 37(b) of the Excise Act.

05. Learned counsel further submits that the petitioner has been suffering from cold and cough and was on medication and had taken cough syrup and this fact is also reflected from breath analysis test report as the content of alcohol is much less than the minimum limit as prescribed under Section 185 of the Motor Vehicles Act and for considering a person to be drunk. Even on the account of breath analyzer test, no *prima facie* case is made out against the petitioner.

06. Learned counsel further submits that moreover under Section 75 of the Act, the failure of the police to collect blood and urine test along with breath analysis test would render the whole prosecution impermissible. Learned counsel further submitted that there are a number of decisions of learned Coordinate Benches of this Court wherein the prosecution/FIR have been quashed which was based on only the breath analyzer test and referred to the decisions of this Court in the case of ***Anil Kumar Sinha Vs. The State of Bihar & ors.*** passed in ***Cr.W.J.C. No. 1624 of 2022, Narendra Kumar Vs. The State of***

Bihar & ors. passed in ***Cr.W.J.C. No. 1430 of 2024*** and ***Manju Devi Vs. The State of Bihar & ors.*** passed in ***C.W.J.C. No 2590 of 2022.***

07. Learned counsel next referred to the case of ***Bachubhai Hassanalli Karyani Vs. State of Maharashtra,*** reported in ***1971(3) SCC 930*** wherein the Hon'ble Supreme Court held that no conclusion with regard to consumption of alcohol by a person can be made on the facts that the persons breathe was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. The Hon'ble Supreme Court categorically held that consumption of alcohol can only be ascertained by way of blood and urine test of a person suspected to have consumed alcohol.

08. The learned counsel further submits that a counter affidavit has been filed by the State-respondents and it has nowhere been mentioned that the petitioner has been subjected to any blood and urine test and hence breath analysis test alone could not be an admissible piece of evidence to return a finding that the petitioner had consumed alcohol. Thus, the learned counsel submits that in the given facts and circumstances, the present prosecution has been brought into existence in an arbitrary and whimsical manner and if the present prosecution is

allowed to be continued against the petitioner, the same would be an abuse of process of law and hence, the FIR of Patliputra P.S. Case No. 01 of 2020 needs to be quashed along with subsequent proceeding.

09. Learned counsel for the State-respondents vehemently contends that there is no merit in the present petition and the same be dismissed. The learned counsel submits that Section 75 of the Act provides for conduct of breath analysis test and medical test and the Act specifically provides for breath analysis test as a means to ascertain whether a person has consumed alcohol or not. If the petitioner was found to having alcohol content of 9.1 mg/100ml in breath analysis report, an offence is made out under Section 37(b) of the Excise Act. After investigation the police submitted charge sheet finding the allegation against the petitioner to be true. If the allegation was substantiated by breath analysis test, the petitioner was in intoxicated state and therefore, he has committed an offence under the provisions of the Excise Act.

10. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

11. Section 37(b) of the Excise Act reads as under:-

“37. Penalty for consumption of liquor.

.....

(b) is found drunk or in a state of drunkenness at any place;”

Now, Section 75 of the same Act reads as under:-

“75. Power to conduct breath analysis tests and medical tests.

(1) Any of the Officers mentioned in Section-73 may ask any person to undergo breath analysis tests and/or such medical tests as he may deem fit.

(2) The person so asked, is duty bound to submit himself to such medical tests or breath analysis tests. Should he fails to do so, it shall be presumed that he has committed an offence under Section 37 of the Act and shall be prosecuted accordingly.

(3) The reports of such tests shall be admissible as evidences under the Indian Evidence Act, 1872.”

Prima facie it appears prosecution could be initiated merely on the basis of breath analysis test as Section 75(1) mentions an officer can direct a person to undergo breath analyzer test *and/or* such medical test as he may deem fit. However, considering the stringency of the criminal prosecution, law expects the Courts to err on the side of caution. For holding a person guilty in a criminal trial, he is required to be so proved beyond reasonable doubt and for this reason, the prosecution is required to bring on record the evidence with sterling qualities. Therefore “and/or” used in Section 75(1) would essentially mean “and”. There could not be any disjunction so as to infer that either the breath analysis report

or the blood and urine examination report will suffice for holding a person guilty. Therefore in the absence of report of blood/urine or any other medical report, the prosecution could not be sustained merely on the basis of breath analysis test report.

12. In the present case, the prosecution was initiated by lodging the FIR which was based solely on the report of breath analysis of the petitioner and is not supported with any other medical report and hence, the FIR could not be sustained.

13. Therefore, the FIR bearing Patliputra P.S. Case No. 01 of 2020 instituted for the offences under Section 37(b) of the Bihar Prohibition and Excise Act and all subsequent criminal proceeding against the petitioner are quashed.

14. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	-
CAV DATE	-
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