

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2571 of 2025

Arising Out of PS. Case No.-69 Year-2021 Thana- SINGHESHWAR District- Madhepura

Shamsher Bahadur S/O Shri Sikandar Prasad Resident Of Chiraili Tola,
Banarsi Bigha, P.S. Khijar Sarai, District- Gaya

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Inspector of Police, Madhepura Sadar Circle, Distt-Madhepura Bihar
3. The SHO, PS-Singheshwar, Distt-Madhepura Bihar
4. The Superintendent of Police, Madhepura Bihar
5. The District Magistrate, Madhepura Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Hrishikesh, Advocate Mr. Chandramauli Kumar, Advocate
For the Respondent/s	:	Mr. Sita Ram Yadav, GP-16 Mr. Rakesh Kumar Shrivastava, AC to GP-16

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 12-12-2025

The present criminal writ has been filed on behalf of
the petitioner seeking the following reliefs:-

i. For issuance of a declaration to the effect that the Petitioner could not be held guilty in Singheshwar P.S. Case No. 69/21, dated 25.03.2021 registered u/s 37(b) and (c) of Bihar Prohibition and Excise Act, 2016 and corresponding Excise Case No. 257/2021 in view of the fact that the police could not produce any cogent material to prove the allegations against the Petitioner and that the Petitioner having been counselled by his advocate, despite pleading his innocence, deposited the fine of Rs. 2,000/- only to end up the pending



trial.

ii. For a further declaration that no social stigma of consuming alcohol could be attached to the petitioner for any practical purposes simply because he deposited the fine of Rs. 2,000/- in the said case.

Iii. For any other relief for which the Petitioner may be considered fit in the facts and circumstances of this case.

02. Brief facts of the case, leading to filing of the present writ, are that the petitioner along with co-accused Pawan Kumar Singh were apprehended on 25.03.2021 by the police in an inebriated condition after a tip off that two persons had been creating ruckus and indulging in misbehavior with public. Singheshwar P.S. Case No. 69 of 2021 has been registered against petitioner and co-accused under Section 37(b)(c) of the Bihar Prohibition and Excise Act, 2016 (hereinafter 'the Excise Act'). It further transpires from the record that petitioner had been working in the capacity of Special Survey Amin under the Department of Revenue and Land Reforms, Shankarpur Area of district Madhepura. The petitioner filed an application before the learned 2nd Additional Sessions Judge-cum-Special Judge, Excise, Madhepura in Excise Case No. 257 of 2021 submitting that the petitioner was willing to end the matter by deposit of fine. Consequently, learned 2nd Additional Sessions Judge-cum-Special Judge, Excise, Madhepura vide order dated 22.04.2022



directed the petitioner to deposit the amount of Rs.2000/- and in default of payment of fine he was directed to undergo one month of simple imprisonment and with this order the case was disposed of. Thereafter the petitioner preferred the instant writ.

03. Learned counsel for the petitioner submitted that the petitioner never pleaded guilty before the learned trial court and under wrong legal advice he deposited the fine. From the order of the learned trial court it appears as if the petitioner had pleaded guilty but the same is not the case. The application filed by the petitioner shows he never submitted before the trial court the he pleads guilty rather he has submitted that he is completely innocent and he just wanted the matter to end and for this purpose he was ready to deposit the fine. The learned counsel further submits that the order of the learned trial court is illegal and the same has been passed without any compliance of the relevant provisions of law. Form VII under Rule 18 of the Bihar Prohibition and Excise Rules, 2021(in short the 'Excise Rules') prescribes the format of the order sheet when an accused is produced before the Court for commission of offences under Section 37 of the Bihar Prohibition and Excise Act 2016 which specifically provides that the Court has to ask the accused whether he pleads guilty and if he pleads guilty then only he can



be directed to pay fine. The present order is not in the format prescribed under Rule 18 of the Excise Rules. Even for pleading guilty, a format under Rule 18 has been provided in the form of Form VI A. But neither the deposition of the petitioner was recorded in the format of Form VIA nor the learned trial court drew the order sheet in the format of Form VII of the Excise Rules. In this regard learned counsel for the petitioner referred to the case of ***Jadunandan Prasad Sinha Vs. State of Bihar & Ors., 1998(1)BLJud 825 in Cr. Rev. No. 400 of 1992*** wherein the learned Single Judge held that conviction without following procedure prescribed by law could not be sustained as the Magistrate convicted the accused without taking evidence despite refusal to plead guilty. Thus the Court held that the order was passed without application of mind and is illegal and unsustainable.

04. Learned counsel further submits that even on the facts of the case no case is made out against the petitioner. Petitioner has been apprehended in a suspected case of consumption of alcohol. Though the petitioner requested the police to conduct breath analyzer test, the police did not conduct the breath analyzer test on the petitioner or his friend. Thereafter, when the petitioner was taken to the doctor for



examination, neither his blood nor urine sample were taken. Without any examination of blood and urine and merely on observation of the doctor about coordination of the petitioner being abnormal, dilated pupils, being slow in reaction to light and having alcoholic smell, this false case has been lodged. But the fact remains the doctor has stated it to be a case of suspected consumption of alcohol and no unequivocal finding was recorded. When neither breath analyzer test nor blood or urine tests were conducted, the case of the petitioner will always remain suspected case of consumption of alcohol. Merely on the basis of a perfunctory medical report, which was prepared without any authentic test like breath analyzer test or blood or urine test, no offence is made out against the petitioner. Learned counsel referred to the case of ***Bachubhai Hassanalli Karyani vs State Of Maharashtra, (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 person's breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. Consumption of alcohol can only be ascertained by way of blood and urine test of a person, suspected to have consumed alcohol. Thereafter, finding that blood and urine



examination of the person was not done, the Hon'ble Supreme Court held that mere smelling of alcohol is not enough to hold that the person has consumed alcohol on the date of his apprehension. Learned counsel next referred to the case of ***Ashwani Kumar Sinha Vs. the State of Bihar and others*** passed in ***CWJC No. 7124 of 2023*** wherein relying on the case of ***Bachubhai Hassanalli Karyani (supra)***, the learned Single Judge came to a finding that breath analyzer test report was not a conclusive proof of consumption of alcohol by a person. Learned counsel also referred to the case of ***Dharmraj Singh @ Dhamraj Singh Vs. State of Bihar & Ors.*** passed in ***CWJC No. 14846 of 2021***, wherein again relying on the case of ***Bachubhai Hassanalli Karyani (Supra)*** it was held that breath analyzer report was not a conclusive proof of consumption of alcohol by a person.

05. Learned counsel further submitted that the petitioner was in contractual employment of the Department of Revenue and Land Reforms and his services were terminated vide order dated 25.04.2023 passed by learned Director, Land Records and Measurement, Government of Bihar on the ground that the petitioner deposited fine of Rs.2000/- in the Court of learned 2nd Additional Sessions Judge-cum-Special Judge,



Excise, Madhepura which shows that the petitioner accepted the allegations against him as true. Even the appeal against the petitioner was rejected by the learned Additional Chief Secretary-cum-Appellate Authority, Department of Revenue and Land Reforms, Government of Bihar vide order dated 13.11.2023. Learned counsel next submitted that when the petitioner has not admitted his guilt, then in such circumstances, the learned Special Judge, Excise Court ought to have conducted the trial in this case which was not done. Learned counsel thus submits that the impugned order has been passed in completely illegal manner and this Court should intervene in the matter and quash the whole proceeding against the petitioner.

06. Learned APP appearing on behalf of the State opposes the submission made on behalf of the petitioner. Learned APP submits that the petitioner has no case before this Court. The petitioner has himself volunteered to deposit the fine envisaged under Section 37 of the Bihar Prohibition and Excise Act. On the voluntary act of the petitioner, the learned 2nd Additional Sessions Judge-cum-Special Judge, Excise, Madhepura accorded him permission for deposit of the fine and further held that the case would be disposed of after deposit of fine. Thus the petitioner has confessed his guilt. Learned



counsel further submits that charge sheet has been submitted in this case against the petitioner with all the cogent material and evidence. It was for the petitioner to deny the accusation brought against him before the learned trial court but he did not do so and instead opted to deposit the fine. So whatever may be the submission of the petitioner, the same is not sustainable.

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

08. Section 37(b)(c) of the Excise Act reads as under:

*“37. Penalty for consumption of liquor.-
Whoever, in contravention of this Act or
the rules, notification or order made
thereunder:-*

(a).....

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

*(c)drinks and creates nuisance or violence
at any place including in his own house or
premises; or*

(d).....”

09. Now the Bihar prohibition and Excise(amendment) Rules, 2022 made pursuant to the Excise Act, 2016 provides for procedure for arrest and prosecution. Relevant part for Rule 18 of the Excise Rules is being extracted for ready reference.

“18. Arrest and Enquiry etc. for consumption



of liquor

1) Whenever a person is arrested for the first time, under section-37 of the Act, the person shall be immediately produced before the duly authorized Executive Magistrate by the police officer or the excise officer.

(2) The concerned police officer or excise officer shall conduct an enquiry and submit a report in Form VI. While conducting the enquiry, the officer concerned shall ascertain the identity of the accused, his ID Proof etc. and shall mention whether the accused has cooperated during the arrest, subjected himself to medical examination or breath analysis and whether he was found creating public nuisance or indulging in violent behavior.

(3) Based on the report, and the deposition made by the accused in Form VIA before the Executive Magistrate, the accused may be sentenced by the Executive Magistrate to pay a fine not less than Rs. 2,000 but not exceeding Rs. 5,000 or undergo simple imprisonment for a period of 30 days in case the accused refuses to pay. Order sheet format is indicated at Form VII for the use of the Executive Magistrate.

Provided that where the police/excise officer, in his report prays that the accused be not released on payment of fine and gives reasons for the same, the Executive Magistrate, subject to his satisfaction, shall then commit the accused for simple imprisonment of 30 days."

10. Further, Form VIA and Form VII under Rule 18 of the Excise Rules provides for deposition of the accused and the



format for order sheet to be drawn by the learned Special Court
are as under:-

**[Form VIA
Deposition of the Accused
(See Rule 18)]**

- 1.Name of the Accused:.....
- 2 Age:
- 3.Father's Name:.....
4. Address:.....
- 5.Date, Time & Place of Arrest:.....

I declare that above information submitted by me
is correct.

**I confess that I was caught drinking or in
inebriated condition on.....(date) at.....
(location). I was subjected to medical
examination/breath analysis test which
confirmed that I had consumed alcohol/liquor.**

I further declare that I am willing to undergo such
punishment as imposed by the Learned Magistrate.
I also agree to cooperate with the police/excise
authorities in the enquiry. I undertake to present
myself before the police/excise authorities or the
Court of the Learned Magistrate whenever
required.

I further declare that shall not repeat the offence
and shall actively cooperate in enforcement of total
prohibition in the State of Bihar.

I am making the above statement out of my own
free will and without fear or coercion.

(Signature of the Accused)

(Signature of the Magistrate)

Certified that the above statement of the accused
is made before me and the same is read out and
explained to the accused and the accused
understood and signed it as correct.

(Signature of the Magistrate)]



**[Form VII
Format for Order Sheet
(See Rule 18)
In The Court of Executive Magistrate,.....**

Case no..... State vs.....

Under Section 37 of Bihar, Prohibition and Excise Act. 2016.

1. Name of the Accused:.....
2. Age:.....
3. Father's Name:.....
4. Address:.....
5. Date, Time & Place of Arrest:.....
6. Date of Submission of enquiry report by police/excise officer:.....

Perused the above-mentioned enquiry report submitted by the police/excise officer. Today, the police/excise officer have produced the above said accused. I hereby take cognizance under Section 37 of Bihar, Prohibition and Excise Act. 2016.

The charge against the accused person is that the accused has consumed alcohol on(date) and was caught at(location). The accused was subjected to medical examination/breath analysis test which confirmed that the accused had consumed alcohol/liquor,

The above charge was read out and explained to the accused person. I have recorded his deposition.

The accused was asked to state whether he pleads guilty. He pleads guilty.

I am prima facie satisfied that the charge against him is well founded.

The accused person is therefore sentenced to pay a sum of Rs..... or in default of payment of the said amount to undergo imprisonment for.....days under Section 37 of Bihar, Prohibition and Excise Act, 2016.

Executive Magistrate cum
Judicial Magistrate, Second Class

Date:-

Place: -]



Therefore, for a person pleading guilty under Section 37, his deposition is to be recorded in the format provided under Form VIA under Rule 18. Similarly, the order sheet will be drawn in Form VII under Rule 18 of the Excise Rules. It is a long settled principle of law that if legislature prescribes for doing a thing in a certain manner, it is to be done in the manner prescribed or not at all. In this regard, reference could be made to a three Judges Bench decision of the Hon'ble Supreme Court in the case of *State of Jharkhand Vs. Ambay Cements, 2005(1) SCC 368* and also the decision of the Hon'ble Supreme Court in the case of *State of Punjab Vs. Devender Pal Singh Bhullar (2004) 11 SCC 770*.

11. Now coming to the facts of the case, the application which was filed before the Court below, a short one is extracted for reference.

- “1. यह कि आवेदक बिलकूल निर्दोष है।
2. यह कि आवेदक पर यह पहला मोकदमा दर्ज हुआ है।
3. यह कि आवेदक 2000 एवं 2000 हजार रुपये फाईन जमा कर मोकदमा को समाप्त कराना चाहता है।

अतः श्रीमान् से निवेदन है कि आवेदक को फाईन जमा करने की अनुमती दिया जाय और उसके उपरान्त मोकदमा को समाप्त करने कि कृपा की जाय। ”



12. On this application the following order was passed
by the learned trial court

“The case is related to S. 37(b) & 37(c) of the Bihar Prohibition & Excise Act 2016. The accused persons appeared before the court along with petition for seeking permission to deposit fine. Sec. 4 of Bihar Prohibition & Excise Amendment Act 2022, rendered the offence u/s 37 of the Bihar Prohibition & Excise Act 2016 punishable with fine of 2,000/- to 5,000/- and if the accused does not pay the fine, he will pass SI for 1 month. In the case in hand the accused persons are ready to deposit the fine, so their request is accepted. They are directed to deposit the fine of amount Rs. 2,000/-. In default of payment of fine, they shall undergo 1 month SI. The case will be disposed of after deposit of fine.”

Therefore, there is no material on record to show that the petitioner pleaded guilty or his deposition was recorded in Form VI(A). Further the learned trial court utterly failed in its duty when it passed the impugned order dated 22.04.2022 because the said order has to be compulsorily passed in the format given in Form VII of the Excise Rules. Hence, the impugned order could not be sustained and this Court would otherwise have remanded the matter to the learned trial court for consideration afresh but for the presence of other factors which also needs to be addressed.



13. In the instant case, the petitioner has been accused of consuming alcohol and acting under its influence. However the FIR has been lodged without any breath analyzer test. It further transpires that though the petitioner was sent for medical examination, neither blood test nor urine test was conducted to ascertain whether the petitioner was under influence of alcohol. It further transpires the case was lodged merely on suspicion and even the doctor considered it to be a suspected case of alcohol consumption and observed that the coordination of the petitioner was abnormal and pupils of both eyes were dilated and the petitioner was slow in his reaction to light and smell of breath was said to be alcoholic. However, the Hon'ble Supreme Court in the case of *Bachubhai Hassanalli Karyani (supra)* held that no conclusion with regard to consumption of alcohol by a person can be made on the facts that the person's breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. Hon'ble Supreme Court further held that consumption of alcohol can only be ascertained by way of blood and urine test of a person, suspected to have consumed alcohol. Hon'ble Supreme Court further held that blood and urine test of the person was not done and finally came to the conclusion that merely smelling of



alcohol was not enough to hold that the person consumed alcohol.

14. In the case of ***Dharmraj Singh(supra) and Ashwani Kumar Sinha(supra)*** though breath analyzer test was done, learned Co-ordinate Benches came to the finding that in absence of blood and urine examination, prosecution could not be sustained and the person cannot be said to have consumed alcohol. This Court in the case of ***Maandhata Mishra Vs. The State of Bihar and Ors.*** passed in ***Cr.W.J.C. No. 1692 of 2025*** dated 16.09.2025 also recorded a similar finding that a FIR based solely on the report of breath analysis of a person and not supported with any other medical report could not be sustained.

15. Hon'ble Supreme Court in the case of ***State of Haryana and Others Vs. Bhajan Lal and Others, 1992 Supp (1) Supreme Court Cases 335*** held as below :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly



defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where



there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

16. Therefore, taking cue from the aforesaid cited decisions of ***Bachubhai Hassanalli Karyani (supra)***, ***Dharmraj Singh(supra)***, ***Ashwani Kumar Sinha(supra)*** & ***Maandhata Mishra (supra)*** and having regard to the guidelines especially at paragraph no. 102 (3) issued by the Hon’ble Supreme Court in the case of ***State of Haryana(Supra)*** allowing the criminal proceeding to continue against the petitioner would amount to misuse of process of law as on the basis of the allegations made in the FIR and material collected in support thereof there does not appear to be sufficient ground for proceeding against the accused petitioner.

17. The aforesaid discussion leads to an irresistible conclusion that the criminal proceeding against the petitioner cannot be sustained and hence the FIR bearing Singheshwar P.S. Case No. 69 of 2021 and all consequential proceedings are hereby quashed against the petitioner.

18. Before parting with this order, it would be apt to



direct all the Courts dealing with the matter under the Excise Act to follow the provisions of law as prescribed under the Excise Act as well the Excise Rules especially with regard to the recording of deposition of an accused pleading guilty in the format prescribed in Form VI A and orders be passed pursuant thereto in the format of Form VII, both under Rule 18 of the Excise Rules. The courts all over Bihar would strictly adhere to the format under the Excise Rules while passing the orders.

19. Let this order be circulated to all the Courts concerned though the Registrar General and a copy be also sent to the Director, Bihar Judicial Academy for imparting training to the Judicial Officers.

20. In terms of the above noted order and directions, the instant writ petition stands allowed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	AFR
CAV DATE	04.12.2025
Uploading Date	12.12.2025
Transmission Date	12.12.2025

