

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.83887 of 2025

Arising Out of PS. Case No.-190 Year-2025 Thana- GOVINDPUR District- Nawada

Princekant Kumar @ Prinskant Kumar Son of Ajay Kumar, Resident of
Village- Rampur, P.S.- Thali, District- Nawada

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Vibhuti Ranjan Sonvadra, Advocate
For the State : Ms. Indu Kumari Srivastava, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

2 10-12-2025 The petitioner seeks anticipatory bail, apprehending his arrest, in connection with Govindpur P.S. Case No. 190 of 2025 dated 18.06.2025, registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2022.

2. As per the allegation, two persons, who are co-accused, were riding on a motorcycle bearing Registration No. BR-21Q-2509, which belongs to the petitioner and as per further case of the prosecution, the pillion rider of the motorcycle was carrying a *pithubag* on his back containing 6 litre illicit liquor. The FIR was lodged against the Petitioner, who was owner of the vehicle as well as two accused, who were riding the motorcycle at the time of recovery of the illicit liquor but the Petitioner was not present, nor any illicit liquor was



recovered from him.

3. Learned counsel for the Petitioner submits that the Petitioner is innocent and he was no way connected with the alleged offence, nor was any occasion for the police to make the Petitioner an accused in this case. He further submits that even presumption under Section 32 of the Bihar Prohibition and Excise Act, 2016 against the owner of the vehicle would arise only when the vehicle could have been used in the commission of the alleged offence under the Act, but as per the facts and circumstances of the case, the vehicle was not used in the commission of the alleged offence nor was the Petitioner/Owner riding the vehicle, nor was he present at the time of recovery of the illicit liquor from the co-accused, who was a pillion rider of the motorcycle at the relevant time. He also submits that as a matter of fact, the Petitioner had given the motorcycle to the co-accused, Amrendra Kumar for bringing some medicine for his mother who was suffering from some illness. Hence, there was no occasion for the police to implead the Petitioner as accused or seize the motorcycle, because a motorcycle is liable to be seized under the Excise Act only when it could have been used in the transportation of the illicit liquor. At most, the co-accused, who was carrying the *pitthu* bag on his back with illicit liquor



could be prosecuted for illegal possession of illicit liquor. The seizure of the vehicle and impleadment of the Petitioner is arbitrary and contrary to the judgments of learned Division Bench of this Court in (i) **Sunaina Vs. State of Bihar**, as reported in **2024 SCC OnLine Pat 851** and (ii) **Binit Kumar Vs. State of Bihar**, as reported in **2024 SCC OnLine Pat 850**, in which under similar facts and circumstances, learned Division Bench clearly held that in such facts and circumstances, the motorcycle could not be deemed to be used in the commission of any offence under the Excise Act and the vehicle could not be seized or confiscated.

4. It is also stated in paragraph no. 2 of the bail petition that the petitioner has not moved this Court earlier either for anticipatory bail or regular one in the instant case.

5. It has further been stated in paragraph no.3 of the bail petition that the petitioner has no criminal antecedent.

6. However, learned APP for the State defends the order dated 10.10.2025, passed by learned Exclusive Special Judge, Excise Court-I, Nawada, passed in Anticipatory Bail Petition No.2461 of 2025, whereby learned Special Court has held that in the facts and circumstances of the case, *prima facie* case is made out against the Petitioner and the Anticipatory Bail



Petition filed by him was rightly rejected as not maintainable.

7. I considered the submissions advanced by both the parties and perused the material on record.

8. From the prosecution case, as emerging from the FIR, it is not the case of the prosecution that the Petitioner, who is the owner of the motorcycle was riding the motorcycle or he was present on the spot or was found in possession of illicit liquor. As per the FIR, two persons were riding the vehicle and the pillion rider was carrying one *pitthu* bag on his back and when the motorcycle was intercepted, the person driving the motorcycle was successful in fleeing away, but the pillion rider was apprehended and six liter of illicit liquor was recovered from his *pitthu* bag kept on his back and he disclosed his name as Amrendra Kumar and also stated to the police that the person who fled away was the co-villager, Neeraj Kumar, who is also a co-accused, but there is not a single word regarding consent or connivance of the Petitioner/owner of the vehicle in the commission of the offence.

9. I further find that the illicit liquor has been recovered not from the dickey or any other part of the motorcycle but from the person of the co-accused, Amrendra Kumar, who was carrying a *pitthu* bag on his back.



10. Under the aforesaid facts and circumstances, the motorcycle cannot be deemed to be used in the commission of the alleged offence under the Excise Act. Presumption under Section 32 of the Excise Act would arise against the owner of the vehicle, who is the Petitioner herein, only when the vehicle could be held to be used in the commission of the alleged offence under the Excise Act. Such view has been expressed by learned Division Bench of this Court, of which I was a part, in **Sunaina Devi case** (supra) wherein it has been held as follows:

“19. The bare reading of **Section 56(b)** of the Act clearly shows that any vehicle or conveyance can be seized and confiscated under the Bihar Prohibition and Excise Act, 2016 only when the vehicle has been used for carrying any intoxicant or liquor.....

20. The first and foremost thing, which emerges from the aforesaid discussion of the statutory provisions, is that no vehicle can be seized or confiscated without its use in commission of any offence under the Bihar Prohibition and Excise Act, 2016. Under Section 30 of the Act, transport of illicit liquor or intoxicant is an offence and in commission of such offence, a vehicle can be used. As such, use of the vehicle in transport of illicit liquor/intoxicant is sine qua non for its seizure and confiscation. It also emerges that just use of the vehicle to carry intoxicant or liquor is also not sufficient for its seizure and confiscation. The involvement or connivance of the owner of the vehicle in such illegal use of the vehicle is also an essential prerequisite for confiscation of the vehicle or imposing any penalty for release of the vehicle. Such view has been consistently expressed by this Court in various judicial pronouncements under writ jurisdiction.

21. It has been held by this Court in **Mohammad Basim Akram vs. State of Bihar [2022 (6) BLJ 540]** that when the driver of a vehicle is found to be carrying some quantity of intoxicant or liquor in the vehicle for his personal consumption without any knowledge of the owner of the vehicle, such vehicle cannot be construed of



having indulged in transportation of illicit liquor. The facts of the case was that 8.8 litre illicit liquor was recovered from the cabin of the driver and driver had confessed that he had purchased the contraband for his personal consumption and kept in the cabin.

22. There is also a possibility of situation where driver of a motorcycle or car or other vehicles may be carrying small quantity of contraband in his clothes like in pocket of shirt or pant. In such situation also, it would be completely erroneous to hold that vehicle was being used for carrying the contraband. **Hon'ble High Court of Kerala in Wilson C.C. Vs. State of Kerala [2022 LiveLaw (Ker) 627]** has expressed similar view. In that case, a person was driving a vehicle and 0.06 grams of LSD Stamp was recovered from wallet kept in his pocket. **Hon'ble Kerala High Court** held that it could not be said that the vehicle was used for conveyance of the contraband and the vehicle is subject to confiscation. In **Thausif Ahammad Bengre Vs. State of Kerala [MANU/KE/0426/2018]** the vehicle was being driven by the driver and 40 grams *Ganja* was recovered from his possession. In that situation, **Hon'ble Kerala High Court** held that it is really fallacious to contend that the vehicle was used for carrying the contraband.

.....
24. It is also pertinent to note that in the light of various pronouncements of this Court, Bihar Government has issued **letter dated 07.02.2020 bearing Letter No. 13/HC-06-55/2020-670**. The letter has been written by Additional Chief Secretary, Home Department cum Prohibition, Excise and Registration Department to all District Collectors, Police Officers and Excise Officers. By this letter, the Government has clearly stated in para-2 of the letter that as per direction of this Court, such vehicle, from which no liquor has been recovered, will not be confiscated. In para-3 of the letter, the Government has stated that when the vehicle was being driven by the driver in drunken condition but no liquor has been recovered from the vehicle, only the driver would be prosecuted under the Bihar Prohibition and Excise Act, 2016.

25. Coming to the case at hand we find that on 17.09.2020, the accused Satyendra Kumar and Sunil Yadav were allegedly riding the motorcycle in question and on search 13.9 liter illicit liquor was seized/recovered from the bag kept by the pillion rider, Sunil Yadav in his hand. There is no allegation, as emerging from the FIR, that the contraband was kept/concealed in any part of the



motorcycle in question to carry it. In such situation, it would be erroneous to hold that the motorcycle was used to carry the contraband. The word “use” cannot be interpreted liberally giving expansive meaning. It has to be interpreted strictly as it has penal consequences. Even the object and scheme of the Bihar Prohibition and Excise Act does not warrant expansive interpretation. At most, the persons who were found in illegal possession of the contraband may be prosecuted for offence as committed under the Act.

.....
28. Hence, the impugned order is arbitrary and hit by Article 14 of the Constitution. It is also violative of Constitutional right of the petitioner to hold property as provided in Article 300 A of the Constitution, which prohibits any deprivation of property without authority of law. The Bihar Prohibition and Excise Act no way authorises the official to seize or confiscate the motorcycle in the alleged facts and circumstances of the case. Hence, the seizure and confiscation of the motorcycle in question is without any authority of law. The confiscation order, is accordingly liable to be quashed. The petitioner, whose constitutional right to property has been violated, is entitled to adequate compensation. He is also entitled to compensation on account of expenditure and harassment in course of forced litigations.”

(Emphasis Supplied)

11. Similar view has been taken by the same Division Bench of this Court in **Binit Kumar case** (supra). In this, the owner of the vehicle was riding his motorcycle, and on interception by the police, 180 ML. illicit liquor was recovered from the pant of the owner riding his motorcycle. Here, it would be pertinent to refer to para nos. 20 and 21 of the judgment, which are as follows:

“20. Coming to the case at hand, no intoxicant or liquor was recovered from the motorcycle of the petitioner. Only 180 ML liquor was recovered from pant of the petitioner. In such situation, the motorcycle cannot be held to have been used to carry the illicit liquor which



was recovered from the person of the petitioner. The word 'use' cannot be given liberal or expansive meaning. It has to be interpreted strictly as it has penal consequences. But the confiscation authority confiscated the vehicle in question by the impugned order. Even the Appellate Authority did not correct the wrong and upheld the confiscation order. Even the Revisional Authority did not do full justice, directing release of the vehicle only after payment of 50% of the insurance value of the motorcycle. Hence, the petitioner was constrained to move this Court incurring further expense on litigation. This case is a classic illustration of how the people are being harassed by concerned State officials in the name of the Bihar Prohibition and Excise Act, 2016.

21. In view of the aforesaid facts and circumstances of the case, we find that all the impugned orders are arbitrary and hit by Article 14 of the Constitution. They are also violative of Constitutional right of the petitioner to hold property as provided in Article 300A of the Constitution, which prohibits any deprivation of property without authority of law. The Bihar Prohibition and Excise Act no way authorises the official to seize or confiscate the vehicle in the alleged facts and circumstances of the case. Hence, the seizure and confiscation of the motorcycle in question is without any authority of law. The confiscation, appellate and revisional orders are, accordingly, liable to be quashed. The petitioner, whose constitutional right to property has been violated, is entitled to adequate compensation. He is also entitled to compensation on account of expenditure and harassment in course of forced litigations.”

(Emphasis Supplied)

12. Here, it would be also profitable to refer to **Smt. Sheelu Jha Vs. The State of Bihar** as reported in **AIR ONLINE 2025 PAT 781** and **2025 (5) BLJ 892** and decided by this Court itself in the context of NDPS Act. In this case, 60 sachets of smack were recovered from the pant of the rider of the motorcycle, belonging to the petitioner and it was not a case of the prosecution that the contraband was concealed



in any part of the vehicle, nor was a case that the vehicle was used with the consent or connivance of the owner of the vehicle to transport the contraband under the NDPS Act. Hence, it was held here that the vehicle could not be held to be used in transportation of the contraband.

13. Here, it was also observed by this Court that permissibility of seizure of motorcycle in such situation would lead to absurd situations, requiring even aircraft, train or any public transport to be seized and confiscated if a passenger therein is found to be carrying some contraband on his person without the knowledge of the owner of the carrier, nor can be such object of the N.D.P.S. Act. The provision for seizure and confiscation of the vehicles under the N.D.P.S. Act, as it has been provided under the Excise Act also, has been made to discourage the owner of any vehicle from using his vehicle or permitting it to be used with his consent or connivance in illegal trade of contraband.

14. Here, it was also observed that such seizure of motorcycle in such situations would lead to harassment of the innocent owners and it would also result into wastage of national resources, because the seized vehicles generally turn into waste/junk in course of time on account of corrosion and



decay. The relevant part of the judgment reads as follows :

“**35.** As such, in the case on hand, the seizure of the vehicle in question was not permissible under the N.D.P.S. Act. If such seizure is allowed, it may lead to absurd situations, requiring even aircraft, train or any public transport to be seized and confiscated if a passenger therein is found to be carrying some contraband on his person without the knowledge of the owner of the carrier. There can be never such object of the N.D.P.S. Act. The provision for confiscation of vehicles under the N.D.P.S. Act has been made to discourage the owner of any vehicle from using his vehicle or permitting it to be used with his consent or connivance in illegal trade of contraband under the N.D.P.S. Act. However, such purpose may not be served if any vehicle is confiscated, which was neither used by the owner or allowed by him with consent or connivance to transport the contraband under the N.D.P.S. Act. It may only lead to harassment of the innocent owners and wastage of national resources. The seized vehicles generally turn into waste/junk in course of time on account of corrosion and decay.

36. As such, the seizure of the vehicle in question was not only arbitrary, but also violative of Article 300A of the Constitution. Had the petitioner moved this Court invoking writ jurisdiction, the petitioner could have got not only unconditional/absolute custody of the vehicle, but even compensation on account of violation of his constitutional rights to hold property, which could not be deprived of except as per the procedure as established by law, as Division Bench of this Court, of which I was a part, has held in the cases of **Binit Kumar Vs. State of Bihar (2024 SCC OnLine Pat 850)** and **Sunaina @ Suneina Vs. The State of Bihar and Ors. (2024 SCC OnLine Pat 851).**”

(Emphasis Supplied)

15. As such, I find that learned Exclusive Special Court below has erroneously rejected the bail application of the Petitioner as not maintainable taking the view that as per the alleged facts and circumstances, *prima facie* offence under the Excise Act is made out against the Petitioner.

16. Here, it would be pertinent to mention that right to life and property is very precious for the people and the Courts



are required to protect their such rights. Learned Court below should not have mechanically passed the order rejecting the Anticipatory Bail Petition of the Petitioner. If the arbitrary or illegal actions of the State Officials are approved by the District Judiciary in this way, it would be a serious blow to the edifice built in our legal system to protect the rights of the people.

17. Hence, Courts below are requested to look into the prosecution case with all sincerity to find out whether any *prima facie* offence is made out against Petitioners before rejecting their Anticipatory Bail Petitions under the Excise Act.

18. Such mechanical orders passed by the Special Excise Courts are adding to the burden of this Court, which is already overburdened with Excise matters and the justice delivery system is clogged.

19. Coming to the case on hand, I find that there is no *prima facie* case made out against the Petitioner under the Excise Act and the Petitioner is entitled to get anticipatory bail.

20. Accordingly, **this petition is allowed**, directing the petitioner, above-named, to be enlarged on bail, in the event of his arrest or surrender before the court below within a period of eight weeks from the date of receipt / production of a copy of this order, on his furnishing bail bonds in the sum of Rs.



10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned concerned Court Below, in connection with Govindpur P.S. Case No. 190 of 2025, subject to the conditions as laid down under Section 482 (2) of the B.N.S.S., 2023 and on the following conditions:

(i) In case, it is brought to the notice of the court below that the petitioner has any criminal antecedents other than the disclosed one, learned court below shall cancel the bail bonds of the petitioner after hearing him and getting satisfied that the petitioner has concealed his criminal antecedents despite his knowledge of the same.

(ii) In case, it is brought to the notice of the court below that statement regarding previous bail petition is wrong, learned court below shall cancel the bail bonds of the petitioner.

21. Learned Registrar General is directed to circulate a copy of this order amongst all the Judicial Officers presiding the Special Excise Courts and send a copy of this order to D.G.P., Bihar, Patna to circulate it amongst the police officials connected with the Excise Act and the NDPS Act.

(Jitendra Kumar, J.)

Ravishankar/
Chandan/Shoaib

U		T	
AFR/NAFR		AFR	

