

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59173 of 2025

Arising Out of PS. Case No.-381 Year-2016 Thana- GOVERNMENT OFFICIAL COMP.
District- Muzaffarpur

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MANOJ KUMAR THAKUR @ MANOJ THAKUR @ MANOJ KUMA
THAKUR S/O Late Jagdish Prasad Thakur @ Jagdish Thakur R/O Gaushala
Road, Begusarai, P.O.- Begusarai, P.S.- Town, Dist.- Begusarai- 851101

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner	:	Mr. Arun Kumar Sinha, Advocate
		Mr. Amit Narayan, Advocate
For the Opposite Party	:	Mr. Madhura Nand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR
CAV ORDER

4 24-06-2026 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The present application has been filed for quashing the order dated 04.10.2024, passed by the learned Exclusive Special Judge (Excise), Court No.II, Muzaffarpur, in Excise P.S. Case No.381/2016/Spl.-Ex.3527/24, whereby cognizance has been taken under Section 37 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act') against the petitioner and the petitioner was summoned. The petitioner has further prayed for quashing the entire criminal proceeding arising out of Excise P.S. Case No.381 of 2016 dated 25.11.2016.

3. The prosecution case, as per the First Information



Report (FIR), is that the petitioner was working as a Class-IV employee on the post of Barber in Bihar Military Police-15, Balmikinagar, Bagaha, and he was assigned with the duty of hair cutting. It has been alleged that, on 24.11.2016, at 15.45 hours, the Deputy Superintendent of Police was informed about the petitioner creating nuisance at Gate No.2 in an inebriated condition. It has further been alleged that the petitioner was thereafter taken to the Office of Prohibition and Excise Department, Muzaffarpur, for taking appropriate action against him and thereafter breath analysis test was conducted upon the petitioner and as per the breath analysis test report, he was found to have consumed 630.0g/100ml of alcohol.

4. Learned counsel for the petitioner has submitted that to ascertain the consumption of liquor, only breath analysis test was done and no urine or blood test, as is mandated, was conducted so as to come to a final conclusion that the petitioner was found to have consumed alcohol. It has further been submitted that the prosecution report itself goes to show that only breath analysis test was conducted upon the petitioner. It has further been submitted that though the petitioner was taken into custody, the police did not conduct any blood or urine test of the petitioner for confirmation of consumption of alcohol. It



has further been submitted that the petitioner did not display any behaviour such as slurred speech or unsteady gait or any such behaviour which could be levelled to be in drunken condition.

5. Learned counsel for the petitioner, in support of his contention, has relied upon an unreported judgment rendered by a coordinate Bench of this Court, on 16.09.2025, in **Cr. W.J.C. No. 1692 of 2025 (Maandhata Mishra Vs. The State of Bihar and Ors.)**, and has referred to paragraphs 6, 7 and 11 thereof, which are reproduced hereunder: -

*“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.

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.”

6. Learned Additional Public Prosecutor appearing on behalf of the State has vehemently opposed the prayer of the petitioner and has submitted that there is no merit in the present petition and the same deserves to be dismissed. Learned APP for the State submitted that Section 75 of the Act provides for conduct of breath analysis test and medical test and the Act specifically provides breath analyzer test as a means to ascertain whether a person has consumed alcohol or not. If the petitioner has been found having consumed alcohol contained of 630.0g/100ml in breath analysis report, an offence is made out under Section 37(b) of the Act. It has further been submitted that the allegation that the petitioner was in intoxicated state was substantiated by the breath analysis test, and, therefore, he has committed an offence under the provisions of the Act.

7. In the present case, the prosecution was initiated by lodging a prosecution report and the same was based solely on the report of breath analysis test of the petitioner and is not



supported with other medical tests/reports and hence the prosecution report against the petitioner cannot be sustained.

8. Accordingly, the FIR bearing Excise P.S. Case No.381/2016/Spl.-Ex.3527/24 and all subsequent criminal proceedings against the petitioner is quashed.

9. This application is allowed.

(Praveen Kumar, J)

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AFR/NAFR	NAFR
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