

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75126 of 2023

Arising Out of PS. Case No.-232 Year-2022 Thana- POTHIIYA District- Kishanganj

SANTOSH KUMAR SINGH son of Late Gagan Dev Prasad Singh @ Late
Gagan Dev Singh R/o- Nital Basti (Nitali Basti), W.No-6, PS- Thakurganj
Dist- Kishanganj

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Prabhakar Singh
For the Opposite Party/s : Mr.Damodar Prasad Tiwary

CORAM: HONOURABLE MR. JUSTICE ANSUL
ORAL JUDGMENT

Date : 07-04-2026

Heard learned counsel for the petitioner and learned APP
for the State.

2. The present application has been filed by the
petitioner invoking inherent jurisdiction of this Hon'ble Court for
quashing the order dated 04.05.2023 passed by the learned
Additional Sessions Judge II -cum- Special Judge (Excise) I,
Kishanganj in Special Case No. 1021 of 2022 arising out of Pothia
PS Case No 232 of 2022 whereby and where under the learned Court
took cognizance against the petitioner under Section 30 (a) of the
Bihar Prohibition & Excise (Amendment) Act.

3. The prosecution case is that the informant alleges
that during patrolling on 25.09.2022, he received secret information



about the foreign liquor kept in the motorcycle bearing No BR-37AA-4705 near Railway RUB Pool No 73 situated between Pothia Chowk, Chichuabari. On the basis of the information, he reached along with constable near railway track. He asked from the labourers who were working on railway line upon which Santosh Kumar Singh (petitioner) replied that he is the owner of the motorcycle after which the informant searched the motorcycle and found a plastic bag kept on its guard in which 15 bottles (5.625 liters) foreign liquor was recovered.

4. Learned counsel for the petitioner submits that the petitioner is a resident of Kishanganj district and he is an employee of North East Railway posted as Track Maintainer I in Katihar Division. At the time of transporting some articles which was property of railway from one place to another place during working period, the informant came and made illegal demand upon which petitioner replied about interference made during work of railway after which the informant threatened him to face the consequences. It is further submitted that the petitioner also reported to the higher authorities against the act of the informant but when the petitioner was engaged in his official duties, the informant came and has falsely implicated him in the present case.

5. It is also submitted that the Investigating Officer supported the act of the informant and has not investigated the case fairly and after completion of formalities submitted charge sheet



under Section 30 (a) of the Bihar Prohibition and Excise (Amendment) Act, 2018 against the petitioner. It is next submitted that perusal of the FIR would show that total 5.625 liters foreign liquor was recovered from the motorcycle which the petitioner claimed to be his own. The petitioner states that the motorcycle was lying in an open space and the mischief of any other person cannot be ruled out.

6. The Bihar Prohibition and Excise (Amendment) Act, 2018, and its implementing scheme cast a statutory duty on the excise/police authorities to keep the seized liquor in safe custody till the order of the Collector, and where chemical examination is required, to ensure that the seized article is handled in a manner that preserves its identity and purity. Provision is made for safe custody of seized intoxicants, for getting chemical examination, and for destruction of unlawful intoxicants only after retaining a sample and following prescribed procedures. However, the act does not contain a detailed rule-based regime for chain of custody analogous to Section 52-A of the NDPS Act.

7. In such a situation, the well settled principles of evidence-law and the jurisprudence on chain of custody in excisable-substance and narcotics cases are fully applicable. Courts have consistently held that where a conviction is sought to be founded on a contraband and chemical report, the prosecution must establish an unbroken, documented chain of custody from the moment of seizure,



through storage, sampling, forwarding to the Chemical Examiner, return of the report, and production of the same article before the Court. The chain must show who had the article or sample at each stage, the date-time of transfer, and the condition of the seal; gaps, inconsistencies, or non-contemporaneous documentation render the evidence unreliable.

8. The absence of an explicit provision in the Bihar excise statute does not, therefore, absolve the prosecution from the duty of maintaining an evidentiary-quality chain of custody. The duty to preserve the integrity of the seized article flows from the conjunction of the statutory requirement of sale custody and the requirement of reliable proof under the Evidence Act.

9. The record discloses that the prosecution has failed to demonstrate a continuous and tamper-proof chain of custody of the seized liquor and the sample drawn therefrom. The seizure-memo, forwarding-note, read together, reveal gaps and inconsistencies in the handling of the seized article. The prosecution has not been able to account for who had custody of the liquor at each stage, how it is stored, in what manner the sample was drawn and forwarded to the Chemical Examiner, and whether the exhibit produced before the Court is the same which was seized at the initial stage. The record also fails to show an unbroken continuity of seal-integrity at critical junctures.

10. The prosecution has further failed to produce any



seizure witness-memo or independent record of the sampling-procedure, and the subsequent order of the Collector for destruction of the seized liquor has obliterated the possibility of effective cross-examination on the identity of the article. In these circumstances, the reliance placed on the narrative of seizure alone cannot be treated as a reliable evidentiary foundation for a conviction under Section 30 (a) of the Bihar Prohibition and Excise (Amendment) Act, 2018.

11. Once the chain of custody stands ruptured, the entire evidentiary edifice built upon the seized liquor and its analysis crumbles, and the Court cannot act upon the same as a reliable basis for conviction.

12. In view of the aforesaid, this Court holds that the prosecution has failed to establish a tamper-proof and continuous chain of custody of the seized foreign liquor and the sample sent for chemical examination. The continued prosecution in Case No 232 of 2022 on the file of Pothia Police Station, Kishanganj under Section 30 (a) of the Bihar Prohibition and Excise (Amendment) Act, 2018, on such an evidentiary foundation would amount to perpetuation of an inherently defective process and would be contrary to the principles of fair trial and the ends of justice.

13. Thus, the order dated 04.05.2023 passed by the learned Additional Sessions Judge II -cum- Special Judge (Excise) I, Kishanganj in Special Case No. 1021 of 2022 arising out of Pothia PS Case No 232 of 2022 is hereby quashed.



14 . Accordingly, the application stands allowed.

(Ansul, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.04.2026
Transmission Date	21.04.2026

