

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2684 of 2024

Arising Out of PS. Case No.-635 Year-2023 Thana- GARDANIBAG District- Patna

Kaushlendra Kumar S/o Late R.P. Sinha R/o -Village-Gopalpur, P.S.-Bikram,
District- Patna, Bihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Advocate Mr. Hemant Kumar, Advocate
For the Opposite Party/s	:	Mr. Binod Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

ORAL JUDGMENT

Date : 06-01-2026

Heard Mr. P.N. Shahi, learned senior counsel for the
petitioner and Mr. Binod Kumar, learned APP for the State.

2. The present application has been filed for quashing
of the First Information Report registered as Gardanibagh P.S.
Case No. 635 of 2023, instituted for the alleged offence
punishable under Section 37 of the Bihar Prohibition and Excise
Act, 2016.

3. The prosecution case, in brief, is that while the
police were on routine night patrolling at about 20:30 hours near
Anisabad Golambar, information was received regarding
consumption of liquor at the C.S. Office, Gardanibagh. Upon
reaching the said place, it is alleged that four to five persons fled



from the spot, out of whom two persons were apprehended including the petitioner. A breath analyzer test was conducted upon him, which allegedly indicated alcohol content of 65 mg per 100 ml, whereas the co-accused, namely Upendra Kumar, was found to have 0 mg per 100 ml and was accordingly released, while the petitioner was taken into custody and the present F.I.R. came to be registered.

4. Learned senior counsel for the petitioner submits that the entire prosecution rests solely on the breath analyzer reading, without any confirmatory medical examination by way of blood or urine analysis, as the breath analyzer test alone cannot conclusively establish consumption of alcohol. It is contended that the breath analyzer test is, at best, a preliminary screening tool and cannot be treated as substantive evidence of consumption of alcohol. It is further submitted that the petitioner had been consuming homeopathic medicines and that several other extraneous factors such as use of toothpaste, mouthwash, breath fresheners, metabolic variations and body temperature are known to affect breath analyzer readings, thereby rendering such readings unreliable in the absence of corroboration.

5. It is further submitted that subsequent to the registration of the FIR, departmental proceedings were initiated



against the petitioner on identical allegations. A full-fledged departmental enquiry was conducted and the entire matter was assessed. Upon such enquiry, the Enquiry Officer submitted a detailed and reasoned report exonerating the petitioner of all charges. The said report has been brought on record by way of supplementary affidavit. Learned counsel submits that though departmental proceedings and criminal proceedings are distinct, in the peculiar facts of the present case, the departmental exoneration lends strong support to the petitioner's contention that the allegations in the FIR are unfounded and continuation of the criminal prosecution would amount to abuse of the process of law.

6. Learned senior counsel for the petitioner has placed reliance upon the decision of this Court in *Narendar Kumar Ram v. State of Bihar*, rendered in *Criminal Writ Jurisdiction Case No. 1430 of 2024*, wherein it was held that a breath analyzer test by itself, in the absence of corroborative medical evidence such as blood or urine examination, cannot be treated as conclusive proof of consumption of alcohol. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in *Bachubhai Hassanalli Karyani v. State of Maharashtra*, reported in (1971) 3 SCC 930, wherein it was categorically held



that no conclusion regarding consumption of alcohol can be drawn merely from the smell of alcohol on a person's breath, unsteady gait, incoherent speech or dilated pupils, and that the factum of consumption can be reliably established only through blood and urine tests. In the present case, it is pointed out that there is not even an allegation that the petitioner exhibited any physical or behavioral symptoms of intoxication at the time of his apprehension.

7. Per contra, learned APP appearing for the State has opposed the petition and submitted that the FIR was registered on the basis of credible information and that the breath analyzer test was conducted in accordance with the provisions of the Bihar Prohibition and Excise Act, 2016, using an authorized and calibrated device. It is contended that the breath analyzer reading of 65 mg per 100 ml, *prima-facie*, discloses commission of an offence and justifies registration of the FIR. It is further argued that departmental exoneration does not operate as a bar to criminal prosecution, as the two proceedings operate in distinct fields.

8. This Court has given anxious consideration to the rival submissions advanced by learned counsel for the parties, the materials available on record, and the settled principles of



law governing the issue. Upon consideration, it becomes evident that the foundation of the prosecution case rests almost entirely on the breath analyzer test allegedly conducted by the police party. There is a complete absence of corroborative medical evidence in the form of blood or urine examination, which alone are recognized as reliable and conclusive methods for establishing consumption of alcohol. This Court also finds that there is no allegation whatsoever that the petitioner was found to be walking unsteadily, speaking incoherently, or exhibiting any other physical signs commonly associated with intoxication.

9. The absence of such corroborative circumstances assumes significance in light of the law laid down by the Hon'ble Supreme Court in *Bachubhai Hassanalli Karyani v. State of Maharashtra*, reported in (1971) 3 SCC 930, wherein it has been unequivocally held that breath analyzer results or smell of alcohol, in isolation, cannot form the sole basis for concluding that a person has consumed alcohol. The ratio laid down therein squarely applies to the facts of the present case.

10. The Court also takes note of the departmental proceedings initiated against the petitioner on the same set of allegations, which culminated in his exoneration after a detailed enquiry. While it is trite law that departmental proceedings and



criminal proceedings are independent and that exoneration in one does not automatically nullify the other, in the present case the departmental findings do reinforce the conclusion that the allegations against the petitioner lack credibility and are unlikely to withstand judicial scrutiny in a criminal trial.

11. Further guidance is drawn from the principles enunciated by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, reported in *1992 Supp 1 SCC 335*, wherein the contours of the High Court's power to quash criminal proceedings were delineated. One of the well-recognized categories warranting such interference is where the allegations, even if taken at their face value, do not disclose the commission of any offence, or where the proceedings are manifestly attended with mala fides or amount to an abuse of the process of law.

12. Applying the aforesaid principles to the present case, this Court is of the considered view that the FIR, being founded on incomplete, uncorroborated and unreliable evidence, does not disclose a *prima-facie* case warranting continuation of the criminal proceedings.

13. Ordinarily, the Court would be slow to interfere with an FIR at the threshold; however, where the materials on record demonstrably fail to satisfy the basic legal requirements



for prosecution and continuation of proceedings would result in undue harassment of the accused without serving any legitimate public interest, the Court would be justified in exercising its inherent jurisdiction. In the facts and circumstances of the present case, the absence of confirmatory medical evidence, lack of any observable indicia of intoxication, and the petitioner’s exoneration in departmental proceedings cumulatively persuade this Court to hold that continuation of the criminal proceedings would amount to abuse of the process of law.

14. Accordingly, the present application is allowed and the First Information Report registered as Gardanibagh P.S. Case No. 635 of 2023 dated 09.09.2023, is hereby quashed.

(Rudra Prakash Mishra, J)

Alok Verma/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.01.2026
Transmission Date	19.01.2026

