

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Dinesh Chaudhary**

**vs**

**The State of Bihar**

Criminal Miscellaneous Number 11468 of 2024

21 February, 2024

**(Hon'ble Mr. Justice Ramesh Chand Malviya)**

**Issue for Consideration**

Whether an Order passed by learned Special Court while rejecting bail application of petitioner in connection with excise case is correct or not?

**Headnotes**

Code of Criminal Procedure, 1973—Section 437 and 439—Regular Bail—Bihar Prohibition and Excise (Amendment) Act, 2022—Section 37—petitioner was arrested as per Section 37, Act, 2022—petitioner and other persons were found in drunken state—petitioner cannot be held under custody for more than one month as per Section 37.

Held: imprisonment of one month is bailable under Schedule-II of Cr.P.C.—at the time of hearing, petitioner was in custody which is more than one month beyond the period of punishment under Section 37 of Act, 2022—Trial Court has seriously erred in reading the FIR and without bare reading of FIR, has passed an order according to Act, 2016 and rejected the bail of the petitioner—Trial Court/concerned Court directed to file a reply to show cause—petitioner directed to be released on bail immediately.

(Paras 7, 8, 9 and 11)

**Case Law Cited**

None

**List of Acts**

Code of Criminal Procedure, 1973; Bihar Prohibition and Excise (Amendment) Act, 2022.

#### **List of Keywords**

Bail: imprisonment for one month; Section 37 of Bihar Prohibition and Excise (Amendment) Act, 2022.

#### **Case Arising From**

From an Order of rejection by learned Special Court in connection with Kishanpur P.S. Case No. 261 of 2023 registered for the offence punishable under Section 37 of the Bihar Prohibition and Excise Amendment Act, 2022.

#### **Appearances for Parties**

**For the Petitioner:** Mr. Santosh Kumar, Advocate.

**For the State:** Mr. Rajendra Nath Jha, APP

**Headnotes Prepared by Reporter: ABHAS CHANDRA, Advocate.**

#### **Judgment/Order of the Hon'ble Patna High Court**

IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.11468 of 2024

Arising Out of PS. Case No.-261 Year-2023 Thana- KISHANPUR District- Supaul

Dinesh Chaudhary, Male, Age about 33 years, S/o Late Yogendra Choudhary,  
R/o Vill - Hulas, P.O. - Hulas, P.S. - Raghopur, Dist. - Supaul

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Santosh Kumar, Advocate  
For the Opposite Party/s : Mr. Rajendra Nath Jha, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND  
MALVIYA

ORAL ORDER

2      21-02-2024                      Heard learned counsel for the petitioner and learned  
APP for the State.

2. The petitioner seeks bail in connection with  
Kishanpur P.S. Case No. 261 of 2023 registered for the offence  
punishable under Section 37 of the Bihar Prohibition and Excise  
Amendment Act, 2022.

3. As per the prosecution case, the petitioner and  
other persons were found in drunken state.

4. The learned counsel for the petitioner states that  
the petitioner has falsely been implicated in this case and  
nothing has been recovered from the possession of the  
petitioner. The petitioner was found in drunken state and as per  
Section 37 of the Bihar Prohibition and Excise Amendment Act,  
2022, petitioner cannot be held under custody for more than one



month.

5. Learned counsel for the APP opposes the prayer for regular bail of the petitioner and submits that petitioner is a habitual offender and there are several antecedents relating to Section 30(a) of the Bihar Prohibition and Excise Amendment Act, 2016. He further conceded that offence under Section 37 is a bailable offence under Bihar Prohibition and Excise Amendment Act, 2022.

6. On perusal of FIR and impugned order, the petitioner was arrested as per Section 37 of the Bihar Prohibition and Excise Amendment Act, 2022 states clearly that-

**“Penalty for consumption of liquor –**

Whoever, in contravention of this Act or the rules, notification or order made there under consumes liquor or intoxicant at any place or is found drunk or found under influence of any intoxicant, within any premises or outside, shall be arrested immediately and produced before the nearest Executive Magistrate. He shall however be released if he pays a penalty as may be notified by the State Government. Failure to pay such penalty shall invite a simple imprisonment of one month. Any intoxicant found in his possession shall be seized and destroyed as



per section-57.

Provided that, in case of repeat offenders, the State Government may, by notification, prescribe additional penalty or imprisonment or both.

All offenses under this Section shall be disposed of through the procedure of summary trial by an Executive Magistrate who shall exercise the powers of Judicial Magistrate second class for the purpose of this Section. The State Government shall appoint such Executive Magistrate in consultation with the High Court.

The inquiry of cases under this section shall be conducted by an excise officer or a police officer not below the rank of Assistant Sub-Inspector.

Any person accused of committing offence under this section also commits an offence punishable under any other Act, and then he shall also face the consequences as mentioned under that Act.”

7. Accordingly to this Section, the petitioner should be released on bail. The imprisonment of one month is bailable under schedule II of Cr.P.C., that is as follows-



| II. CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS                                       |                              |                          |                                |
|---|------------------------------|--------------------------|--------------------------------|
| Offence   | Cognizable or non-cognizable | Bailable or non-bailable | By what Court triable          |
| If punishable with death, imprisonment for life, or imprisonment for more than 7 years. | Cognizable.                  | Non-bailable.            | Court of Session.              |
| If punishable with imprisonment for 3 years, and upwards but not more than 7 years.     | Ditto                        | Ditto                    | Magistrate of the first class. |
| If punishable with imprisonment for less than 3 years or with fine only.                | Non-cognizable.              | Bailable.                | Any Magistrate.                |

The petitioner was apprehended on 8.12.2023 and the case was heard by the Learned Special Court on 16.01.2024. The accused at the time of hearing of the case, was in custody which is more than more than one month beyond the period of punishment under Section 37 of the Bihar Prohibition and Excise Amendment Act, 2022.

8. It is to be noted that as per section 436 of Cr.P.C. stated hereunder –

**“436. In what cases bail to be taken.**

(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail :  
Provided that such officer or Court, if he or it thinks fit,[may, and shall, if such person is indigent and is unable



to furnish surety, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided further that nothing in this Section shall be deemed to affect the provisions of sub-Section (3) of Section 116,

Explanation.-Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso.

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of Section 116

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay



the penalty thereof under Section 446.”

9. The Trial Court has seriously erred in reading the FIR and without bare reading of FIR, has passed an order according to **Bihar Prohibition and Excise Amendment Act, 2016** and rejected the bail petition of the petitioner. Exclusive Special Excise Court-I, Supaul by this order is hereby given a show cause notice as to why he should not be called for an administrative action against him for not following a law laid down by the state legislature and for rejecting the bail petition of the accused person on the basis of Bihar Prohibition and Excise amendment Act, 2016 even when section 37 has already been amended by The Bihar Prohibition and Excise Amendment Act, 2022.

10. The Learned Trial Court/concerned Court is directed to file a reply to show cause within a period of 15 days from date of receipt of this order.

11. Considering the facts and circumstances and submissions made on behalf of the petitioner, let the petitioner, above named, is directed to be released on bail immediately, in connection with Kishanpur P.S. Case No. 261 of 2023 on furnishing personal bond of Rs. 2000/- (Rupees Two Thousand) to the satisfaction of learned Exclusive Special Excise Court-I-





Supaul.

**12.** Let a copy of this order be communicated to the learned Exclusive Special Excise Court-I, Supaul/concerned Court through FAX or e-mail forthwith.

**13.** This section 436 of Cr.P.C. shall be followed in every case which comes under the purview of the said section, be it excise matters or any other matter. But looking into the current practice that is being followed by the arresting officials, it is a gross violation of statutory provision stated above. It has been further observed that the contravention of The Bihar Prohibition and Excise amendment Act, 2022 is happening frequently by Judicial officers and also by the arresting authorities, which is gross violation of the statutory law laid down by the Parliament and the State legislature. It is therefore communicated to the Director General of Police, Patna, Bihar to direct all the police officials as well as, it is directed to all the District and Sessions Judges of Bihar also to follow-up with the concerned officials and to implement the procedure laid down in Cr.P.C. and The Bihar Prohibition and Excise amendment Act, 2022.

**14.** The registry is hereby directed to circulate this order to DGP, Patna and to all District and Sessions Judges



of Bihar and Excise Commissioner of Bihar.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

|                   |            |
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