

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2360 of 2024**

Arising Out of PS. Case No.-226 Year-2021 Thana- UDWANTNAGAR District- Bhojpur

Akash Kumar Singh S/O MEGHA SINGH R/O VILLAGE- MAKDUMPUR,
P.S.- BIHIYA, DIST- Bhojpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Raju Singh

For the Respondent/s : Mr. Ramchandra Singh

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER**

4 16-03-2026

1. The present appeal has been filed within time, accordingly, the same is admitted for hearing.

2. Call for the Lower Court Record of Excise Case No. 968 of 2021 arising out of Udwantnagar P.S. Case No. 226 of 2021 from the court of learned Additional Sessions Judge-cum-Special Judge Excise Court No. II, Bhojpur at Ara / concerned court.

3. The present appeal has been preferred by the appellant against the judgment of conviction dated 04.04.2024 and order of sentence dated 08.04.2024, passed by learned Additional Sessions Judge-cum-Special Judge Excise Court No. II, Bhojpur at Ara, in Excise Case No. 968 of 2021 arising out of Udwantnagar P.S. Case No. 226 of 2021, whereby the appellant has been convicted for the charges under Section 30(a) of the Bihar Prohibition and Excise Amendment Act, 2018.

4. The appellant has been convicted under Section 30(a) of the Bihar Prohibition and Excise Amendment Act,



2018, and sentence has been awarded for six years rigorous imprisonment and to pay a fine of Rs. 1,00,000/- for the offence under Section 30(a) of the Bihar Prohibition and Excise Amendment Act, 2018, and in case of default of payment of fine, further six months of imprisonment has been ordered.

5. The prosecution story is that the police party got the information that accused persons were coming with liquor for the purpose of sale and on search 80 liters of country made mahua wine was recovered from the appellant and a seizure list was prepared.

6. Learned counsel for the appellant, on the point of grant of bail and suspension of sentence, argued that the prosecution has miserably failed to bring the charges against the appellant without any reasonable doubt. Referring to Section 81(3) of the Bihar Prohibition and Excise Amendment Act, 2018, learned counsel submits that Section 81(3) says that while seeking the destruction of intoxicants etc. the concerned police or excise officer shall get the chemical examination done. Apart from the Special Court, any nearest Judicial Magistrate or Executive Magistrate shall be competent to give the permission for such chemical examination.

7. He further refers to Bihar Prohibition and Excise



Rules, 2021, and submits that definition of chemical examiner is mentioned in the rule which says that Chemical Examiner means the officer appointed by the Government as Chemical Examiner to the Excise Chemical Laboratory, Forensic Science Laboratory, the Central Revenue Control Laboratory or the Central Forensic Science Laboratory, and also includes the Deputy Chemical Examiners of the above laboratories or any other laboratory declared by the Excise Commissioner after due approval of the department.

8. Learned counsel placed paragraph 13 of the judgment and submits that the seized article/liquor was not sent for chemical examination in a specified laboratory and the chemical examination was done by the Inspector Excise who is not the chemical examiner as per the provisions of Act and the Rules. Prima facie, the chemical examination of the seized article is not in accordance with law.

9. The appellant is in custody for about two and a half years.

10. Mr. Ram Chandra Singh, learned counsel for the State, opposes the prayer for bail and submits that appeal has not yet been admitted and the LCR has not been called.

11. Having regard to the submissions made on behalf



of the parties and taking into consideration the fact that the appellant has remained in custody for about two and a half years, prima facie from the judgment, it appears that chemical examination of the seized article was not done in specified laboratory. Accordingly, sentence awarded to the appellant shall remain suspended during pendency of this appeal and the appellant is directed to be released on bail. Fine, if any, imposed as a part of sentence shall also remain suspended.

12. Let the appellant, above named, be released on bail, pending appeal, on furnishing bail bonds of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-cum-Special Judge Excise Court No. II, Bhojpur at Ara, in connection with Excise Case No. 968 of 2021 arising out of Udwantnagar P.S. Case No. 226 of 2021.

(Anil Kumar Sinha, J)

HarshPandey/-

U		T	
---	--	---	--

