

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4441 of 2024**

Arising Out of PS. Case No.-37 Year-2022 Thana- E.C.I.R (GOVERNMENT OFFICIAL)
District- Patna

Sunil Bhardwaj @ Sunil Kumar S/o Sh. Kalyan Sharma R/o village-Noorpur
Madhaiya, P.S-Gulaothi, District-Bulandshahar, U.P 245408 Also At-C-71,
Sector ETA-01, Greater Noida, Kasana, Gautam Budh Nagar, Near ATS
DOLCI, U.P-201310

... .. Petitioner/s

Versus

Deputy Director, Directorate Of Enforcement, Patna Zonal Office Bank Road,
Chandpura Place, Patna-800001, Bihar Email-edgoi-patna-bih@nic.in
Telephone 91-612-2219444

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Lokesh Kumar Singh, Advocate
Mr. Anshuman Sahani, Advocate
For the Opposite Party/s : Dr. Krishna Nandan Singh (ASG)
For the UOI : Mr. Ankit Kumar Singh, Advocate, ED
Mr. Prabhat Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER**

- 2 06-02-2024
1. Heard learned counsel for the petitioner and learned counsel appearing for Union of India and E.D.
 2. The learned counsel appearing on behalf of the Union of India submits that the case will be argued by the learned Additional Solicitor General of India, Patna High Court.
 3. While the learned counsel appearing on behalf of the ED submits that the case will be argued by learned advocate Mr. Manoj Kumar Singh. The learned counsel for the petitioner submits that the present quashing application has been filed seeking quashing of ED, ECIR No.PTZO/37/2022 dated



13.12.2022 instituted against the petitioner and other for investigating into alleged proceeds of crime generated from the alleged supply of liquor into the State of Bihar in violation of the Bihar Excise Prohibition Act, 2016 as amended up to date.

4. The learned counsel for the petitioner raises a short issue and submits that the issue involved in the present quashing application is whether the ECIR could have been instituted by the ED with respect to an offence committed which is not a scheduled offence or by taking recourse to section 120B of the IPC any offence committed would come within the ambit of scheduled offence as under the schedule in description of the offence section 120B of the IPC is also incorporated.

5. The learned counsel for the petitioner next submits that the answer obviously would be 'No' for the reason that conspiracy would always be with respect to the offence mentioned in the schedule of the Prevention of Money Laundering Act, 2002 and not with respect to any offence which is not part of the scheduled offence. The learned counsel for the petitioner next submits that the Hon'ble Supreme Court in the case of **Pavanadibbur Vs. The Directorate of Enforcement** reported in **2023 INSC 1029** it has been categorically held that the offence punishable under Section 120B of the IPC will



become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the schedule.

6. The learned counsel for the petitioner thus submits that any offence committed under the Bihar Excise Prohibition Act, 2016 would not come within the purview of the ED as offence committed under Bihar Excise Prohibition Act, 2016 is not a scheduled offence. The learned counsel for the petitioner next submits that the present ECIR has been instituted based on allegations alleged against the petitioner in Kochadhaman P.S. Case No.152 of 2022 dated 23.06.2022 and Phulwarisharif P.S. Case No.1221 of 2022 dated 07.10.2022 and other FIRs.

7. The learned counsel for the petitioner next submits that at page 12 of the quashing application details of the FIR instituted against the petitioner has been given and from perusal of the same it would manifest that Bihta P.S. Case No.425 of 2022, Kishanganj P.S. Case No.91 of 2019 have been stayed, it is further stated that even Amba P.S. Case No.34 of 2021 has been stayed, by this Court.

8. Learned counsel thus in sum and substance submits that the ED mechanically cannot proceed against the petitioner when from bare perusal of the allegation as alleged in the FIR



based on which the ECIR has been instituted does not even remotely suggest that petitioner committed any scheduled offence under the PMLA Act.

9. The learned counsel appearing on behalf of the Union of India and ED seek six weeks time for filing counter affidavit. The counter affidavit shall given parawise reply of the pleadings made in the quashing application and shall also reply the submission made by the learned counsel for the petitioner based on the judgment of the Hon'ble Supreme Court as recorded herein above.

10. Put up this case on 29.04.2024.

11. In the meantime, further proceedings in ECIR No. PTZO/37/2022 dated 13.12.2022 shall remain stayed. It is made clear that stay has been granted only with respect to the petitioner herein.

(Satyavrat Verma, J)

Prakash Narayan

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