

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25837 of 2016

Arising Out of PS.Case No. -216 Year- 2016 Thana -KOTWALI District- PATNA

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Yamuna Prasad Sinha @ Yamuna Pd. Singh, Son of Late Bhuneshwar Prasad Singh, Resident of 105, Santosha Complex, Dak Bunglow Road, Bandar Bagicha, P.S.- Kotwali, District- Patna

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vipin Kumar

For the Opposite Party/s : Mr. Iftekhar Mahmood

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

2 04-07-2016 Heard learned counsel for the petitioner and learned counsel for the State.

Petitioner apprehends his arrest in a case instituted under Sections 47(a) & 63 of Bihar Excise Amendment Act, 2016.

It appears from prosecution case that in course of search of Mamta Restaurant, 9 bottles of Aristocrat Old Reserve Whisky of 750 ml was found from underneath the counter of the Manager of the Restaurant. The Manager informed that the Restaurant belongs to the petitioner.

The petitioner submits that admittedly the liquor was not recovered from his possession. There is no allegation in the F.I.R. that at the time of raid, liquor was being offered to any of the customers or was being consumed by anyone. Equally, it is not the prosecution case that the liquor was being stored or was being

offered with tacit knowledge of this petitioner.

Learned counsel for the State opposes the prayer for bail and submits that as the petitioner is the owner of the Restaurant, he would vicariously be liable if the liquor recovered from the Restaurant owned by him.

It appears that in exercise of power conferred under Section 19(4) of the Bihar Excise Act, 1915, (as amended by the Act 3 of 2016), the Government in Department of Excise & Prohibition vide notification, dated 05.04.2016, has imposed ban on wholesale and retail trade or consumption of foreign liquor by any person within the State of Bihar, with immediate effect. In case **of Ram Sunil Verma Vrs. State of Bihar and Others**, reported in **2016 (2) PLJR 919**, having regard to the notification, dated 05.04.2016, a Bench of this Court held that the possession of foreign liquor by anyone cannot be treated as an offence under the Act.

Again a Bench of the this Court in case of **Smt. Manorama Devi Vrs. State of Bihar**, disposed of on 06.06.2016 in **Cr. Misc. No. 24745 of 2016**, observed that possession of foreign liquor has not been banned by the State Government vide notification, dated 05.04.2016

In view of the aforesaid circumstances, if the petitioner surrenders within four weeks and prays for regular bail, he would be released on bail on furnishing bail bond of Rs.5,000/- with two sureties of the like amount each to the satisfaction of learned Chief

Judicial Magistrate, Patna, in connection with Kotwali P.S. Case No. 216 of 2016, with the condition that he would co-operate in the investigation and would not physically absent for two consecutive dates at a stretch till passing of order on the point of charge, which would be decided on its own merit.

(Samarendra Pratap Singh, J)

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