

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24048 of 2016

Arising Out of PS.Case No. -108 Year- 2016 Thana -GOVERNMENT OFFICIAL COMP. District-
NALANDA (BIHARSHARIFF)

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1. Prashant Prakash son of Sri Om Prakash Mehta Resident of Village -
Paharpur, P.S. - Bihar, District - Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. A. K. Thakur,
Mr. Malay Kumar Choudhary
Mr. Ravi Ranjan
M/S. Kiran Thakur

For the Opposite Party/s : Dr. Ravindra Kumar (App)

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD
VERMA**
ORAL ORDER

2 02-06-2016

Heard the parties.

The petitioner seeks bail in a criminal prosecution registered under Section 47(a) of the Bihar Excise Act, 1915 (as amended) (hereinafter to be referred to as the Act.).

Learned counsel for the petitioner submits that the petitioner is the proprietor of M/S. Mirchi Family Restaurant & Bar, Rana Bigha Near Kargil Chowk, P.S. Deep Nagar, Biharsharif (Nalanda). It is further submitted that the petitioner was issued valid licence by the licensing authority for running the aforesaid Restaurant and Bar for the period from 04.04.2012 to 03.04.2017. It is next contended that the license issued to the petitioner was renewed and licence fee of rupees sixteen lacs was deposited by the petitioner on 21.03.2016, which was the licence fee for the year 2016-17. A copy of the registration certificate as also licence issued to the petitioner has been brought on record as annexure-2 to the bail petition.

As per the prosecution case, on 05.04.2016 the Restaurant and Bar of the petitioner was inspected by the Excise

Officials and large quantity of India made foreign liquor, fully detailed in the seizure list, were seized from there.

It is contended on behalf of the petitioner that there is no allegation that on the alleged date of occurrence i.e. on 05.04.2016 the petitioner was dealing with the aforesaid India made foreign liquor. It is next contended that it was not being served to any person or any customer rather the only allegation against the petitioner is that he was possessing/keeping the aforesaid India made foreign liquor in the Restaurant and Bar in question, which was purchased by him earlier. Therefore, according to him, the petitioner cannot be said to have committed any offence and he is entitled to be released on bail. It is also highlighted that the petitioner is a business man and he is behind bars since 05.04.2016 and he is the first offender.

The learned Addl.P.P. appearing on behalf of the State of Bihar has opposed the prayer and has pointed out that the Bihar Excise Act, 1915 was amended by the Bihar Excise (Amendment) Act, 2016 (hereinafter to be referred to as the Amending Act, 2016) and the provisions of Section 19(4) as also Section 47(a) of the Act have been substituted. It is also contended that in exercise of the powers under Section 19(4) of the Amending Act, 2016, notifications have been issued by the State Government on 31.03.2016 and 05.04.2016 putting ban on country liquor as also foreign liquor. However, despite repeated query, he has not been able to show any government notification issued under Section 19(4) of the Act or Amending Act, 2016 putting complete ban on possession of foreign liquor.

After having heard the parties, and on consideration of the materials on record, this Court finds and it is true that the provisions of the Bihar Excise Act, 1915 have been substantially amended by the Bihar Excise (Amendment) Act,



2016 and provisions contained under Section 19(4) and 47(a) of the Act have been substituted. Manufacture, possession, sales, distribution etc. in contravention of the provisions of the Act or Rules made therein or the order or notification issued by the State Government have been declared to be an offence punishable under Section 47(a) of the Act. However, the powers of issuance of notification is vested in the State Government under section 19(4) of the Act. It is further true that notification dated 31.03.2016 regarding country liquor and notification dated 05.04.2016 regarding foreign liquor have been issued by the State Government in exercise of its powers under Section 19(4) of the Amending Act, 2016.

So far as the country liquor is concerned, its sale, purchase, possession and consumption etc. have been completely banned by government notification dated 31.03.2016. However, so far foreign liquor is concerned, the ban has been imposed on its wholesale or retail trade as also on its consumption by government notification dated 05.04.2016. The government notification dated 05.04.2016 does not show that even possession of the foreign liquor has been banned by the State Government. Indisputably, the petitioner was a valid licensee for the Restaurant and Bar in question and for possessing and keeping the foreign liquor. From perusal of the prosecution report filed by the Excise department, it does not appear that the petitioner was dealing with the foreign liquor, kept in the Bar, on the alleged date of occurrence. It has nowhere been stated that it was being served to the customer present there. In absence of such allegation, it cannot be said that the petitioner was trading with the foreign liquor. That being the factual position and the petitioner being a valid licensee, whose licence has not been cancelled till date, as per submission of the learned counsel, the petitioner is entitled to have the benefit of

doubt and, therefore, he is entitled to be released on bail.

For the reasons recorded above, let the above named petitioner be released on bail on furnishing bail bond of Rs.1,00,000/- (Rupees one lac) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Nalanda at Biharsharif in connection with Excise Case No. 108C3 Ex/16 subject to the conditions that :

(A) one of the bailors must be a government servant or close family members of the petitioner, who will file an affidavit in the court below showing his/her relationship with the petitioner,

(B) if the petitioner is found involved in same and similar nature of cases in future, then in that case, the informant/prosecution shall be at liberty to file a petition for cancellation of bail bond of the petitioner, and if such a petition is filed, the court below would be obliged to dispose of the same in accordance with law after giving an opportunity of hearing to all concerned, and

(C) the petitioner shall make regular pairvi in the court below in the present case either by appearing himself in person or through representation by his lawyer on each and every dates, and if on two consecutive dates petitioner fails to make pairvi, then the court below shall be at liberty to cancel the bail bond of the petitioner.

Amin/-

(Birendra Prasad Verma, J)

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