IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41889 of 2016

Arising Out of PS.Case No. -242 Year- 2016 Thana -BARACHATTI District- GAYA

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1. Munna Kumar Son of Vidya Sagar, Resident of Mohalla- Surangpur near Shivam Convent School, P.S. - Ram Krishna Nagar, District - Patna.

.... Petitioner

Versus

1. The State of Bihar .... Opposite Party

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Appearance :
For the Petitioner/s : Mr. Shankar Kumar Thakur
For the Opposite Party/s : Mr. Sri Bharat Lal

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

2 06-10-2016 Heard learned counsel for the petitioner and learned counsel representing the State.

The petitioner seeks bail in connection with Barachatti P.S. Case No. 242 of 2016 registered for the offences punishable under Sections 272, 273 of the Indian Penal Code and Section 47 (a) of Bihar Excise (Amendment) Act, 2016.

Allegedly, from the car, which was being driven by the petitioner, about 72 liters foreign liquor was recovered and the accused persons confessed that they have brought the same to sale in Patna from Jharkhand.

Submission is of false implication and that the petitioner is in custody since 11.07.2016, Division Bench of this Court in C.W.J.C. No. 6675 of 2016 declared the notification dated 05.04.2016 as ultra vires and therefore, the prosecution of the petitioner appears to be bad in law. It is informed on behalf of the prosecution that the State

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Government has notified Bihar Prohibition & Excise Act, 2016, which has come into force from 02.10.2016 and according to Section 98 (2) of the aforesaid Act, anything done or any action taken under the Bihar Prohibition & Excise Act, 2016 shall be deemed to have been done in corresponding provision of the Bihar Prohibition & Excise Act, 2016. It is further submitted that a co-ordinate Bench of this Court in Cr. Misc. no. 40456 of 2016 has held that when the Bihar Excise (Amendment) Act, 2016 has already been declared ultra vires, Section 98 (2) of Bihar Prohibition Excise Act, 2016 shall not apply in the case of the petitioner.

In the facts and circumstances stated above, the petitioner above named is directed to be released on bail on execution of bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned S.D.J.M., Sherghati, Gaya in connection with Barachatti P.S. Case No. 242 of 2016, subject to the conditions that one of the bailors must be a near relative and another having sufficient immovable property within the territorial jurisdiction of the court concerned and the petitioner shall remain present on each and every date during trial and the default on two consecutive dates on his part without any reason shall disentitle the petitioner from privilege of bail.

(Jitendra Mohan Sharma, J)

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