IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.67024 of 2018

Arising Out of PS. Case No.-38 Year-2018 Thana- HATHIDAH District- Patna

==

1. Binod Kumar S/o Ravindra Singh
2. Bittu Kumar S/o Manoj Singh
3. Dhiraj Kumar
4. Avanish Kumar 3 and 4 S/o of Shiv Chandra Singh
5. Sittu Kumar S/o Manoj Singh @ Manoj Kumar

All are resident of Ward No.13 Hathidah Bujurg, P.S. Hathidah, District-Patna

... ... Petitioners

Versus

The State of Bihar

... ... Opposite Party

==

Appearance :

For the Petitioners	:	Mr. Abhay Kumar, Advocates
For the Opposite Party	:	APP

==

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

2 07-01-2019 Heard learned counsel for the petitioners and learned APP for the State.

2. The petitioners apprehend their arrest for the offences alleged Sections 30(A) of the Bihar Excise and Prohibition Act, 2016 (hereinafter referred to as 'the Excise Act, 2016') registered in connection with Hathidah P.S. Case No. 38/2018 corresponding to Special Case No. 5016 of 2018.

3. It is submitted that the petitioners have been falsely implicated in connection with recovery of 198.7 litres of foreign liquor. It is further submitted that the offending goods have not been recovered from the conscious possession of the petitioners.

4. At the very outset, this Court takes note of an order passed by a co-ordinate Bench of this Court in *Ashok Sahani Vs. The State of Bihar*, 2017(3) PLJR 632. After a detailed deliberation over the effect of Section 76(2) of the Excise Act, 2016, it was categorically opined in paragraph-14 that the privilege of pre-arrest bail under Section 438 of the Cr. P.C. is not available to person accused of having committed an offence under the Excise Act, 2016. Certain guidelines (not exhaustive) were also laid out in paragraph-

30, indicating circumstances where bail should normally be granted to the accused persons on their production by the police or on their surrender. The Registrar General was also directed to ensure that stamp reporters would not place applications filed under Section 438 of the Cr. P.C. arising out of the cases under the Excise Act, 2016 before the Bench as defect free cases henceforth.

5. The aforesaid order in *Ashok Sahani's* case (supra) came to be considered of another co-ordinate Bench of this Court passed in Cr. Misc. No. 21578 of 2017 (*Manish Kumar @ Lokesh Kumar Vs. The State of Bihar*) which, by order dated 10.08.2017, held the earlier judgment per incuriam, apart from holding the provisions of Section 76(2) of the Excise Act, 2016 as void in view of Article 254 of the Constitution of India. The question whether the Registry could be restrained from entertaining anticipatory bail petitions as directed in *Ashok Sahani's* case (*supra*), was referred to a larger Bench.

6. By another judgment dated 03.10.2017 passed by a third co-ordinate Bench of this Court in Cr. Misc. No. 42985 of 2017 (*Barun Kumar Vs. The State of Bihar*), the issue relating to maintainability of anticipatory bail petitions in respect of offences under the Excise Act, 2016 came to be considered yet again. The decision in *Manish Kumar's* case (supra) was found to have been passed in oversight of the relevant provisions of the Constitution of India as well as Section 4 of the Cr. P.C. which could not be placed before it. As such the decision in *Ashok Sahani's* case (supra) was held to be binding on a co-ordinate Bench wherein it had been held that an anticipatory bail petition under Section 438 of the Cr. P.C. cannot be maintained in cases of offences arising out of the Excise Act, 2016.

7. The reference to the Larger Bench in Cr. Misc. No. 21578 of 2017 (*Manish Kumar @ Lokesh Kumar Vs. The State of Bihar*) was answered by the Division Bench in its order dated

06.11.2017, opining that the Registry could not be restrained from entertaining anticipatory bail petition in compliance of the order passed in *Ashok Sahani's* case (supra). However, in paragraph-9 of the said order, it was specifically stated that the aspect of the vires/validity/repugnancy of Section 76(2) was not being considered as the same was already sub-judice before the Apex Court. The principles noticed by an earlier Division Bench in *Bisheshwar Mishra Vs. The State of Bihar*, 2016 (4) PLJR 1058 in the context of a similar bar to grant of anticipatory bail under the provisions of SC/ST Act in the light of the Apex Court's decision in *Vilas Pandurang Pawar Vs. State of Maharashtra,* (2012) 8 SCC 795 were taken note of in paragraph-13, which cast a duty upon the Court considering the pre-arrest bail of an accused, to look into the allegations made in the F.I.R./complaint to find out whether ingredients of the offence under the SC/ST Act were prima facie made out or not before exercising its judicial discretion under Section 438 of the Cr. P.C. It was therefore held that the law regarding consideration of an application under Section 438 of the Cr. P.C. for grant of pre-arrest bail to the accused under an Act where there is a bar to grant of anticipatory bail, had been settled as such.

8. In view of the decision of this Court in *Ashok Sahani's* case (supra) as reiterated in *Barun Kumar's* case (*supra*), therefore this Court is constrained to hold that the anticipatory bail petition in respect of offences alleged against the petitioner under the Excise Act, 2016 is not maintainable. Learned counsel for the petitioners has also not been able to satisfy this Court that looking to the allegations made in the F.I.R., the ingredients of the offences alleged against the petitioners have not been made out.

9. The anticipatory bail petition accordingly stands dismissed.

(Vikash Jain, J)

BT/Chandran

U		T	