IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37110 of 2019

Arising Out of PS. Case No.-111 Year-2019 Thana- HARSIDHI District- East Champaran

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Abhijit Kumar, aged about 24 years, (M), Son of Surendra Thakur Resident of Village - Jalgawan, P.S.- Turkauliya, District - East Champaran

... ... Petitioner

Versus

The State of Bihar

... ... Opposite Party

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Appearance :

For the Petitioner : Mr.Hemant Kumar Sharan, Advocate
For the Opposite Party : Mr.Rajendra Pd. Nat, APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

2 18-06-2019 Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner apprehends his arrest for the offences alleged under Section 30(a) of the Bihar Excise and Prohibition Act, 2016 (hereinafter referred to as 'the Excise Act, 2016') registered in connection with Harsidhi P.S. Case No. 111 of 2019.

3. 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.

4. 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.

5. 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.

6. 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.

7. In a recent development, an order dated 19.12.2018 was passed by a Single Bench of this Court in Cr. Misc. No. 69522 of 2018 (Suresh Singh and Anr. vs. State of Bihar) rejecting the prayer for anticipatory bail as not maintainable in view of Section 76(2) of the Bihar Prohibition and Excise Act, 2016. The said order was assailed before the Hon'ble Supreme Court giving rise to Special Leave to Appeal (Criminal) No. 2581 of 2019 which came to be disposed of on 26.03.2019, inter alia, with the following observations –

> *"We are not inclined to interfere with this Special Leave Petition. The Special Leave Petition is dismissed with liberty to the petitioner to pursue remedy of regular bail, if so advised. The same be filed within two weeks' from today."*

8. In view of the observations of the Hon'ble Supreme Court dated 26.03.2019 in Special Leave to Appeal (Criminal) No. 2581 of 2019 as well as the order of this Court in Ashok Sahani's

case (supra) as reiterated in Barun Kumar's case (supra), therefore, this Court has no hesitation in holding that the anticipatory bail petition in respect of offences alleged against the petitioner under the Excise Act, 2016 is not maintainable.

9. Learned counsel for the petitioner 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 petitioner have not been made out.

10. The anticipatory bail petition accordingly stands dismissed.

(Vikash Jain, J)

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