IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1214 of 2019
Arising Out of PS. Case No.-144 Year-2018 Thana- GOVERNMENT OFFICIAL COMP. District- Muzaffarpur

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1. Sanjay Kumar son of Tez Narayan Prasad Singh, resident of Kataru, Chhap, Chhap, Paroo, Muzaffarpur, Bihar-843107, presently working as Head Havaldar at the office of Customs (Prev) Division, Muzaffarpur.
2. Subodh Jha son of Lok Nath Jha, resident of Jajuar, Muzaffarpur, Bihar-843360, presently working as Head Havaldar at the office of Customs (Prev) Division, Muzaffarpur .... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. Union of India through the Secretary, Law and Justice, A-Wing,4th Floor, Shashtri Bhawan, New Delhi-110001
3. The Director General of Police, Government of Bihar, Patna.
4. The Commissioner, State Excise, Bihar, Patna.
5. The Principal Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
6. The Superintendent, State Excise, Muzaffarpur.
7. Director of Prosecution, Government of Bihar, Patna. ... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Amit Pandey, Advocate
For the Respondent/s	:	Mr. Kumar Saurav, AC to SC-11

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 26-08-2019

The defect, as pointed out by the registry, is ignored.

2. Heard learned counsel the petitioners and learned counsel for the State.

3. This application under Article 226 of the Constitution of India has been filed by the petitioners for the following reliefs:-

"(i) For declaration that the arrest and custody of the petitioner under the alleged offences committed under Bihar Prohibition and Excise Act, 2016 as illegal and arbitrary in violation of Articles 14, 19 and 21 of the Indian Constitution; And/or

(ii) For quashing the Seizure Memo dated 03.09.2918 vide PR-18/2018-19 dated 04.09.2018 registered by the State Excise Department after conducting search and arrest of petitioner on 03.09.2018, and further consequential proceedings in connection with aforesaid mentioned case; And/or

(iii) For issuance of an order(s)/direction(s) or writ(s) in the nature of mandamus directing the respondents not to proceed further in the case no.PR-18/2018-19 dated 04.09.2019 till disposal of the instant application."

4. Learned counsel for the petitioners submitted that the petitioners are working as Head Havaldar in the office of the Assistant Commissioner of Customs (Preventive) at Muzaffarpur. There is no prima facie case against them, but the excise officials arrested them in the most arbitrary and casual manner. The arrest of the petitioners is a glaring example of police high handedness. He submitted that the breath analyzer test report cannot be made basis for institution of an FIR. The said test was also not taken by an expert. The blood sample of

the petitioners was not taken and in absence of any proof regarding consumption of liquor by the petitioners, they have been booked in the complaint case instituted under Sections 30(a) and 37(a) of the Bihar Prohibition and Excise Act, 2016 (for short 'The Act, 2016').

5. On the other hand, learned Assistant Counsel to Standing Counsel No.11 appearing for the State submitted that the allegations made in the complaint would clearly attract ingredients of the offence punishable under Sections 30(a) and 37(a) of the Act, 2016. The arrest of the petitioners was made as they were found drunk and were also in possession of illicit liquor.

6. Having heard learned counsel for the parties and carefully perused the record, I find that the Sub-Inspector, Excise, Muzaffarpur, lodged a complaint in the Court of Special Judge, Excise on 04.09.2018. In the complaint he has alleged that the petitioners and three others, namely, Vikki Kumar, Ajay Kumar and Sanjeev Kumar Singh were found in drunken stage in a room. They all were put to breath analyzer test in which the report was found positive. On search of the room, one sealed bottle and two unsealed bottles of foreign liquor were recovered. Accordingly, a search-cum-seizure list was prepared and the

accused persons were arrested. They were produced in the Court of Special Judge, Excise, Muzaffarpur pursuant to which cognizance was taken of the offence punishable under Sections 30(a) and 37(a) of the Act, 2016.

7. Section 30(a) of the Act, 2016 provides penalty for unlawful import, export, transport, manufacture, possession etc. whereas Section 37(a) of the Act, 2016 provides penalty for consumption of liquor.

8. As the petitioners were found drunk and from their possession one sealed bottle and two unsealed bottles of illicit foreign liquor were also recovered, I see no merit in the application of the petitioners. Legality, validity etc. of the breath analyzer test report can be seen by the court at appropriate stage in course of trial. Prima facie, the reports are against the petitioners. Hence, no relief, as prayed, can be granted to the petitioners at the present stage.

9. The application, being devoid of any merit, is dismissed.

Md. S/- **(Ashwani Kumar Singh, J)**

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	31.08.2019
Transmission Date	31.08.2019