

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4772 of 2020

Arising Out of PS. Case No.-145 Year-2019 Thana- KHODAWANDPUR District- Begusarai

UPENDRA YADAV Son of Ramswarath Yadav Resident of Village - Tetrahi,
P.S.- Khodawandpur, Distt - Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sandip Kumar Gautam, Adv.

For the Opposite Party/s : Mr. Uma Shankar Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 13-05-2020 Heard Mr. Sandip Kumar Gautam, learned counsel for
the petitioner and Mr. Uma Shankar Prasad Singh, learned APP
for the State.

The proceeding has been conducted through video
conferencing.

The petitioner has preferred the present application for
grant of bail in a case registered for the offences punishable
under Sections 272, 273, 120B of the Indian Penal Code and
Section 30(a) of Bihar Prohibition and Excise Act, 2016, as
amended by Act 8 of 2018 (hereinafter referred to as 'the Act')
as the petitioner is languishing in custody since 15.12.2019.

The prosecution case, as per the written report of A.S.I.
Sambhu Dayal Prasad submitted before the SHO, Chhaurahi
O.P. Police Station is to the effect that on 17.07.2019, during



patrolling, in the night, the informant received secret information that in an orchard situated adjacent to Pansalma chauk road illicit liquor had been brought through Tata 407 vehicle. Consequently, a raid was laid and a Scorpio vehicle, a Piaggio vehicle and a Passion Pro motorcycle were intercepted, leading to recovery of total 4863 litres of Indian Made Foreign Liquor. The FIR was registered against the drivers and owners of the vehicles in question along with 12 unknown. The name of the petitioner sprang up during investigation on the basis of Call Details Record which suggested that the petitioner was not only in contact with the other accused person just before the seizure but was present in the vicinity of the place of seizure.

It is submitted by learned counsel for the petitioner that the alleged recovery has not been made from the possession of the petitioner and a statement has been made in paragraph no.7 of the petition that the petitioner has no concern with any of the vehicles from which the said seizure has been made. Moreover, the seizure has been made by A.S.I. of police which is contrary to the provisions of Section 73(e) of the Act which mandates that search or seizure can be made by a police officer not below the rank of Sub-Inspector of Police. It is further submitted that the investigation has already been concluded and a statement



has been made in paragraph no. 3 of the petition that the petitioner is not having any criminal antecedent.

Learned APP, after going through the case diary, submits that complicity of the petitioner transpired on the basis of the Call Details Report which suggested that the petitioner was in constant touch with the other accused person and his mobile was found active at the relevant time around the vicinity of the place of seizure. However he has not controverted the contention of learned counsel for the petitioner that the petitioner is not having any criminal antecedent and the investigation has already been concluded.

Considering the fact that the accusation against the petitioner is based on circumstantial nature of evidence, investigation being already concluded, the seizure *prima facie* appears to be made by an officer who is not authorized under the Act and statement made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent, let the petitioner above named be released on bail, for the present, provisionally for a period of three months on furnishing one surety to the satisfaction of the learned 2nd Additional Sessions Judge-cum-Special Judge, Excise, Begusarai, in connection with Khodawandpur P.S. Case No. 145 of 2019.



However, it will be open for the learned Court below to accept the bail bond on furnishing an undertaking by the bailor, on photo copy of his Adhar Card to the effect that he is ready to become the bailor of the petitioner which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the petitioner will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two sureties, including one surety given at the time of provisional bail, of the like amount each to the satisfaction of the learned 2nd Additional Sessions Judge-cum-Special Judge, Excise, Begusarai, in connection with Khodawandpur P.S. Case No. 145 of 2019.

The learned Court below will further be at liberty to extend the period of provisional bail further if the lockdown, due to the present pandemic COVID-19, is not over in three months.

(Dinesh Kumar Singh, J)

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