

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 4994 of 2020

Arising Out of PS. Case No.-122 Year-2019 Thana- SARE District- Nalanda

DEEPAK KUMAR Son of Late Ram Vilas Mahto @ Ram Vilas Prasad
Resident of Village - Benar, Police Station - Sare, District - Nalanda.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sudish Kumar, Adv.

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

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 14-05-2020 Learned counsel for the petitioner submits that he is languishing in custody since 08.01.2020, but inadvertently, it has been recorded in the petition as 08.01.2019.

As prayed for, learned counsel for the petitioner is permitted to make necessary correction.

Heard Mr. Sudish Kumar, 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 offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by the Amendment Act 8 of 2018,



(hereinafter referred to as 'the Act'), as the petitioner is languishing in custody since 08.01.2020.

The prosecution case, as per the written report of A.S.I., Vijay Kumar submitted before the S.H.O., Sare Police Station, Nalanda is to the effect that on 23.12.2019, the secret information was received that the petitioner Deepak Kumar is resident of village-Benar is storing liquor. Subsequently, a raid was laid and from the house of the petitioner, total 91.05 litres of Indian Made Foreign Liquor were recovered. The petitioner managed to escape from the place of seizure, but the villagers identified him and disclosed his name as Deepak Kumar (petitioner).

It is submitted by learned counsel for the petitioner that the recovery, if any, has been made i.e. from the joint family house and the investigation has already been concluded. A statement has been made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent. 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 the search or seizure can be made by a police officer not below the rank of Sub-Inspector of Police.

Learned APP for the State submits that the said



recovery has been made from the house of the petitioner.

Considering the quantity of recovery, the investigation being already concluded and the seizure *prima facie* appears to be made by an officer who is not authorized under the Act coupled with statement made in paragraph no.3 of the petition with regard to criminal antecedent of the petitioner and the said statement has not been controverted by learned counsel for the State, 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 3rd A.D.J.-cum-Special Judge, Excise, Nalanda (Biharsharif), in connection with Sare P.S. Case No. 122 of 2019 (arising out of G.R. No. 6984 of 2019).

However, in view of the present pandemic COVID-19, it will be open for the learned Court below to accept the bail bond on furnishing an undertaking by the surety, 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 3rd A.D.J.-cum-Special Judge, Excise, Nalanda (Biharsharif), in connection with Sare P.S. Case No. 122 of 2019 (arising out of G.R. No. 6984 of 2019).

The learned Court below will further be at liberty to extend the period of provisional bail further if the lockdown is not over in three months.

(Dinesh Kumar Singh, J)

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