

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4635 of 2020

Arising Out of PS. Case No.-220 Year-2019 Thana- BARGAINIA District- Sitamarhi

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RENU DEVI @ RIAGAWALI W/o Bigu Paswan Resident of Village -
Dumarvana, P.S.- Bairgania, Dist.- Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pushpendra Kumar Singh, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 13-05-2020 Heard Mr. Pushpendra Kumar Singh, 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 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 01.10.2019.

The prosecution case, as per the written report of A.S.I.
Devendra Kumar submitted before the SHO, Bairgania Police
Station is to the effect that on 24.09.2019, during patrolling,



the informant received secret information that at Dumkhana tempo stand one Renu Devi was carrying Nepali liquor, a raid was laid and a lady was seen with two bags, but as soon as the police reached near her she left the bags and escaped from the scene. During frisking, from the bags 44.7 litres of Nepali liquor were recovered, leading to registration of the present case.

It is submitted by learned counsel for the petitioner that the petitioner is a lady and apart from the present case, the petitioner is accused in two other cases of accusation of similar nature being Bairgania P.S. Case No. 47 of 2017 and Bairgania P.S. Case No. 205 of 2019. The same is also recorded in the impugned order but inadvertently it has been recorded in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent. However, a supplementary affidavit has been filed to that effect, which is on record. It is further submitted that the said recovery has not been made from the conscious physical possession of the petitioner and the bags from which the said liquor claimed to have been recovered does not contain any incriminating article suggesting the bags belonging to the petitioner. 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. However, the investigation has already been concluded.

Learned APP submits that the petitioner on seeing the police left the bags and escaped from the scene. Moreover, the petitioner is having criminal antecedent.

Considering the fact that the petitioner is a lady, the investigation has already been concluded and the seizure *prima facie* appears to be made by an officer who is not authorized under the Act, 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, Sitamarhi, in connection with Bairgania P.S. Case No. 220 of 2019.

However, 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 2nd Additional Sessions Judge-cum-Special Judge, Excise, Sitamarhi, in connection with Bairgania P.S. Case No. 220 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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