

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5218 of 2020**

Arising Out of PS. Case No.-327 Year-2019 Thana- WARISLIGANJ District- Nawada

SACHIN CHOUDHARY Son of Krishna Choudhary Resident of Village -
Mohiuddinpur, P.S.- Warisaliganj, District - Nawada

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Devendra Prasad Singh, Adv.

For the Opposite Party/s : Mr. J. N. Thakur, APP

**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER**

3 14-05-2020 Heard Mr. Devendra Prasad Singh, learned counsel
for the petitioner and Mr. J. N. Thakur, 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 18.12.2019.

The prosecution case, as per the written report of A.S.I.,
Dinesh Rajak submitted before the SHO, Warisaliganj Police
Station is to the effect that on 01.09.2019 at 10.00 P.M., during



night patrolling information was received that Sachin Kumar, the petitioner is manufacturing country made liquor in his house, the raid was laid. From the house of the petitioner four persons were apprehended and 600 litres of fermented country made liquor which was destroyed, however, 50 litres country made liquor were recovered.

It is submitted by learned counsel for the petitioner that the recovery has been made from the joint family house. Though the petitioner is accused in six other cases of similar nature, however, in the present case, the search and 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. It is further submitted that co-accused, Amerjeet Kumar, Ajay Kumar @ Ajay Kumar Manjhi, Raj Manjhi and Mukesh Choudhary have been granted bail by a Co-ordinate Bench of this Court vide order dated 04.12.2019, passed in Criminal Miscellaneous No. 72203 of 2019.

Learned APP submits that the petitioner has criminal antecedent and the recovery has been made from his house. Though the investigation has already been concluded.



Considering the fact that 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, Nawada, in connection with Warisaliganj P.S. Case No. 327 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 learned 2nd Additional Sessions Judge-cum-Special Judge, Excise, Nawada, in connection with Warisaliganj P.S. Case No. 327 of 2019



In view of the criminal antecedent of the petitioner, the learned Court below will be at liberty to cancel the bail bond of the petitioner, if the prosecuting agency files an application to that effect that the petitioner gets involved substantially in similar nature of offence.

(Dinesh Kumar Singh, J)

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