

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8893 of 2020

Arising Out of PS. Case No.-246 Year-2019 Thana- NASRIGANJ District- Rohtas

SADIN CHOUDHARY Son of Mahesh Chaudhary Resident of Village -
Kishori Nagar, P.S.- Sitaram Dera, District- East Singhbhum (Jamshedpur)
Jharkhand

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ashutosh Tripathy

For the Opposite Party/s : Mr.Syed Ehteshamuddin

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

4 09-07-2020 The matter has been taken up through virtual Court proceeding.

Learned counsel for the petitioner undertakes to add Section 420 of the IPC in the first paragraph of the petition since the same has inadvertently not been mentioned, within a period of two weeks of resumption of the Court proceeding in physical mode.

In case of non-removal of the defects within the undertaken period, the office will place the matter before the bench.

Heard learned counsel for the petitioner and learned counsel for the State.



The petitioner is languishing in jail since 19.12.2019 in a case registered for the offences punishable under Section 420 of the IPC and Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by Act 8 of Amendment Act, 2018. Hence, prayer for bail has been made through the present application.

The prosecution case, as per the written report of ASI of Police Janardan Prasad Singh submitted to the SHO, Nasriganj Police Station, is to the effect that on 18.12.2019 at 3.00 A.M. during patrolling, a secret information was received that liquor is being transported by a Tata 407 vehicle. Consequently, Tata 407 vehicle was intercepted on which tomatoes were found loaded. It is alleged that from the said vehicle, 267.84 litres of Indian Made Foreign Liquor concealed under tomatoes were recovered and two persons, namely Amawas Ram and the petitioner Sadin Choudhary were apprehended. The petitioner claims to be the driver of the vehicle in question and he stated that the tomato belongs to co-accused Antu Nat and Krishna Nat who used to deal in trafficking of liquor. On the statement of co-accused, total 475.2 litres of Indian Made Foreign Liquor kept in a bamboo clump were recovered, hence total 743.04 litres of liquor were recovered, leading to the registration of the present



case.

It is submitted by learned counsel for the petitioner that the petitioner being driver of the vehicle in question was not aware of the liquor being loaded on the vehicle which was loaded kept hidden under tomatoes. Statement has been made in paragraph 3 of the petition that the petitioner is not having any criminal antecedent. The investigation has already been concluded.

Learned APP submits that the recovery has been made from the vehicle in question which was being driven by the petitioner.

Considering the fact that FIR has been registered and seizure has been made by Assistant Sub Inspector of Police who is not authorized to make seizure since as per Section 73(e) of the Act which mandates that the seizure can only be made by a police officer not below the rank of Sub Inspector of Police, hence the entire search and seizure gets clouded due to non-compliance of the procedural safeguard mandated in the Act, statement made in paragraph 3 of the petition that the petitioner is not having any criminal antecedent, the recovery has not been made from the conscious physical possession of the petitioner, investigation has already been concluded coupled



with the period in custody, 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 Court (Judge), Excise, Rohtas at Sasaram in connection with Nasriganj P.S. Case No. 246 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 Aadhar 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 of the like amount each to the satisfaction of the learned 2nd Additional Sessions Judge-cum-Special Court (Judge), Excise, Rohtas at Sasaram including one surety given at the time of provisional bail.

The learned Court below will be at liberty to further extend the period of provisional bail if the Court proceeding in



physical mode is not resumed in three months.

This application is, accordingly disposed of.

(Dinesh Kumar Singh, J)

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