

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9056 of 2020

Arising Out of PS. Case No.-335 Year-2019 Thana- SULTANGANJ District- Patna

MD. FIROZ @ BECHU MIYAN Son of Md. Ijhar Mian Resident of
Ambedkar Colony, Near Pani Tanki, P.S. - Sultanganj, District - Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rudal Singh Mr.Pramod Kumar
For the Opposite Party/s	:	Mr.Sharda Kumari

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

4 12-06-2020 The matter has been taken up through virtual Court proceeding.

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

The petitioner is languishing in jail since 29.11.2019 in a case registered for the offences punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 as amended by Act 8 of Amendment Act, 2018 of the IPC.

The prosecution case, as per the written report of Md. Gyasuddin Khan, S.I., Sultanganj Police Station submitted to the SHO, Sultanganj Police Station, is to the effect that on 28.11.2019, during raid, a secret information was received that in Ambedkar Colony, one Bechu has stored liquor. Consequently, a



raid was laid and Md. Firoz alias Bechu Miyan (petitioner) was apprehended and from the possession of the petitioner, 37 sachets were recovered and he suggested that such sachets contained brown sugar. It is further alleged that from one bag, 4.75 litres of country made liquor were also recovered.

It is submitted by learned counsel for the petitioner that the weight of the alleged recovered article has not been mentioned and recovery of the contraband and liquor has not been made from conscious physical possession of the petitioner. The charge sheet has been submitted without the report of the Forensic Science Laboratory and the petitioner is accused in one other case of similar nature, but he is on bail in that case.

Learned APP submits that the petitioner himself disclosed that the recovered sachets contained brown sugar and the investigation has already been concluded.

The offences under the NDPS Act are weight based offences. This Court is dismayed to find that the police officer, who is posted in the capital town of the State, is ignorant about the manner in which case under the NDPS Act is registered. The Court is further shocked to observe that despite the offences under the NDPS Act are weight based, the weight of the seized contraband is not mentioned either in the FIR or in the seizure list.



In fact, the FIR was registered on 28.11.2019 and it appears that the supervising officer directed on 8.5.2020 to the I.O. to record the weight of the seized article when the bail application was preferred on 7.2.2020. This also reflects the callous manner in which the supervising officer is investigating the cases under this stringent Act.

The case diary transmitted to this Court is updated up to 8th May, 2020 which suggests that the sample of the seized article has still not been transmitted to the Forensic Science Laboratory for its examination.

This Court is constrained to direct for release of the petitioner on bail due to the lapses on the part of the informant in registering the FIR according to the law and the casual manner in which the investigation has been conducted. It is submitted by learned counsel for the petitioner that chargesheet in this case has already been submitted under Section 30(a) of the Bihar Prohibition and Excise Act, 2018 as amended by Amendment Act 8 of 2018 and Sections 8, 20(b) and 9 of the NDPS Act, 1985.

Accordingly, 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 Special Judge (Excise), Patna in connection with Sultanganj P.S. Case No.



335 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 Special Judge (Excise), Patna 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 will not resume in three months.

Let a copy of this order be transmitted to the Director General of Police, Bihar for the needful.

(Dinesh Kumar Singh, J)

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