

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16260 of 2020

Arising Out of PS. Case No.-330 Year-2019 Thana- MANJHI District- Saran

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1. BUTA SINGH, S/o Gurudeo Singh, Residence of Village-Dawan, P.S.- Sangaria, District-Hanuman Gadh (Rajshtan).
 2. Bhawar Lal, S/o Amar Singh, Residence of Village - Gajoowas, P.S.- Taranager, District-Churu (Rajasthan).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Rajani Kumari, Adv.

For the Opposite Party/s : Mr. Madhuri Lata, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 15-06-2020 Heard learned counsel for the petitioner and learned
APP for the State.

The matter has been taken up through virtual Court
proceeding.

The petitioner has preferred the present application for
grant of bail in a case registered for the offence punishable
under Sections 30/30(a)/38(1),(2) of the Bihar Prohibition and
Excise Act, 2016, as amended by the Amendment Act 8 of 2018,
(hereinafter referred to as 'the Act').

The prosecution case as per the written report of Gayur Ali
Asard, A.S.I. Manjha Police Station submitted before the
S.H.O., Manjha Police Station is to the effect that on



24.10.2019, during vehicle check, a truck was intercepted and from the truck in question, total 2629.80 litres of Indian Made Foreign liquor were recovered. The petitioners being the driver and cleaner of the truck in question were apprehended.

It is submitted by learned counsel for the petitioners that the petitioners were not aware about the articles being loaded in the truck in question. The petitioners are languishing in custody since 25.10.2019 and investigation has already been concluded. A statement has been made in paragraph no.3 of the petition that the petitioners are 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 a truck of which the petitioners were driver and cleaner.

Considering the fact that the seizure *prima facie* appears to be made by an officer who is not authorized under the Act as the same is against the mandate of Section 73(e) of the Act which clouds the entire seizure, the investigation has already been concluded coupled with statement made in



paragraph no.3 of the petition with regard to criminal antecedent of the petitioners and the said statement not being controverted by learned counsel for the State, let the petitioners 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 Additional District & Sessions Judge 2nd -cum- Special Judge, Excise, Saran at Chapra, in connection with Manjhi P.S. Case NO. 330 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 petitioners which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the petitioners will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) each with two sureties, including one surety given at the time of provisional bail, of the like amount each to the satisfaction of the learned Additional District & Sessions Judge 2nd -cum- Special Judge, Excise, Saran at Chapra, in connection with Manjhi P.S. Case NO. 330 of 2019.



The learned Court below will further be at liberty to extend the period of provisional bail further if the court proceeding in physical mode will not resume in next three months.

(Dinesh Kumar Singh, J)

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