

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12824 of 2020

Arising Out of PS. Case No.-537 Year-2019 Thana- BRAHMPUR District- Buxar

PRABHU CHAUDHARI, S/o Late Bihari Chaudhari, R/o Village-Nimej,
P.S.-Brahmpur, District-Buxar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dr. Kamal Deo Sharma, Adv.

For the Opposite Party/s : Ms. Asha Devi, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 12-06-2020 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 Section 30(a) 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 Pramod
Kumar Paswan, A.S.I., Brahmpur Police Station submitted
before the S.H.O., Brahmpur is to the effect that on 21.11.2019
at 6.40 P.M., a confidential information was received that
Ranjan Kumar @ Bhoda has stored liquor in his house.



Consequently, a raid was laid and from the house of co-accused, Ranjan Kumar @ Bhoda, 25.92 litres of of Indian Made foreign liquor was recovered. The petitioner's name sprang up on the basis of statement of apprehended co-accused as being supplier of the seized liquor.

It is submitted by learned counsel for the petitioner that admittedly, as per the prosecution case, the seizure has not been made from the possession of the petitioner and the petitioner has been roped in the present case only on the basis of suspicion. The petitioner is languishing in custody since 28.01.2020 and investigation has already been concluded. It is further submitted that apart from the present case, the petitioner is accused in one other case, but he is on bail in that case. 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 name of he petitioner sprang up on the confessional statement of co-accused.

Considering the fact that the recovery has not been made from the possession of the petitioner, the investigation



already being 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 Additional District & Sessions Judge 2nd -cum- Special Judge, Excise, Buxar, in connection with Brahmpur P.S. Case No. 537 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, 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, Buxar, in connection with Brahmpur P.S. Case No. 537 of 2019.

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



court proceeding in physical mode will not resume in next three months.

(Dinesh Kumar Singh, J)

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