

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20341 of 2020

Arising Out of PS. Case No.-379 Year-2019 Thana- HISUWA District- Nawada

Ajay Paswan S/o Nagina Paswan R/o village- Tungji, P.S.- Hisua, District- Nawada

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pankaj Kumar, Advocate

For the Opposite Party/s : Mr.Atul Chandra, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 17-08-2020 The Court proceeding has been conducted through virtual mode.

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

Since the court proceeding in physical mode is non-functional, due to present pandemic, COVID-19, the matter is listed with defects.

Learned counsel for the petitioner undertakes to remove the defects within three weeks of resumption of physical court proceeding. In the eventuality of non-removal of defects within undertaken period, the office will place the matter before the bench.

The petitioner is apprehending arrest in a case registered for the offence punishable under Section 30(a) of the



Bihar Prohibition and Excise Act, 2016 as amended by Act 8 of 2018 (hereinafter referred to as the 'Act').

The prosecution case, as per the written report of A.S.I., Lalan Kumar Lalan submitted to the Station House Officer, Hisua Police Station, is to the effect that on 15.09.2019 at 4.00 P.M., during patrolling a secret information was received that the petitioner has stored liquor and is selling the same. Consequently, raid was laid and near the house of the petitioner from the road near an electric pole, 50 sachets each of 200 ml, total 10 litres of Mahua liquor were recovered.

It is submitted by learned counsel for the petitioner that the recovery has not been made from conscious physical possession of the petitioner rather the recovery has been made from the road which is a public place and only on the basis of suspicion, the petitioner has been roped in the present case. A statement has been made in paragraph 3 of the petition that the petitioner is not having any criminal antecedent.

Learned APP submits that the recovery has been from from the road near the house of the petitioner.

Considering the fact that the recovery has been made from the road which is a public place and statement being made in paragraph 3 of the petition that the petitioner is not



having any criminal antecedent, moreover, the seizure of liquor has been made by A.S.I. whereas Section 73(e) of the Act mandates that the seizure of liquor by a police officer not belong the rank of Sub-Inspector of Police is permissible under the law and hence, the whole seizure stood vitiated, let the petitioner above named be released on provisional anticipatory bail for three months, in the event of arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing one surety to the satisfaction of the learned IInd Additional Sessions Judge -cum- Special Judge, Nawada in connection with Hisua P.S. Case No. 379 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 anticipatory bail of the petitioner will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10,000/- (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 IInd Additional Sessions Judge -cum- Special Judge,
Nawada in connection with Hisua P.S. Case No. 379 of 2019,
subject to the conditions as laid down under Section 438(2) of
the Code of Criminal Procedure.

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

Accordingly, the application stands disposed of.

(Dinesh Kumar Singh, J)

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