

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.20202 of 2020**

Arising Out of PS. Case No.-192 Year-2018 Thana- HASANPUR District- Samastipur

Vijay Anand Roy @ Ram Ji Roy S/o Kamala Kant Roy R/o village- Deodha,  
P.S.- Hasanpur, District- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr.Jitendra Narain Sinha

For the Opposite Party/s : Mr.Gauri Shankar Gupta

**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**  
**ORAL ORDER**

2      08-07-2020      The matter has been taken up through virtual Court proceeding.

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

Since the physical court proceeding 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 offences punishable under Sections 30(a), 37(a)(b)(c), 41 and 47 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., Fulena Prasad Yadav submitted to the Station House Officer, Hasanpur P.S., is to the effect that on 17/18.09.2018 at 10.00 P.M., the Station House Officer received a confidential information that in village – Deodha, in front of the shop of the petitioner, Ramji Roy, 7-8 persons are consuming liquor, consequently, a raid was laid and four persons were apprehended, who disclosed their name as co-accused Santosh Kumar Roy, Shivshambhu Mukhiya, Pankaj Kumar and Ankit Kumar, the apprehended accused persons also disclosed the name of three persons and one unknown, who managed to escape from the scene, as co-accused Arvind Sahni, Guddu Rai, the petitioner Ramji Roy and one unknown. From the place of apprehension, one half bottle of 750 ml and one and half bottle of 375 ml of Indian Made Foreign Liquor were recovered.

It is submitted by learned counsel for the petitioner that neither the petitioner was apprehended while consuming liquor nor any recovery has been made from in front of the shop of the petitioner. 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 petitioner managed to escape from the scene on arrival of the police which was also disclosed by the apprehended co-accused.

Considering the rival submissions of the parties, it is well settled law that the procedural safeguard with regard to the search, seizure and arrest has been mandated in Sections 73 and 74 of the Act. In the present case, admittedly, the search and seizure and arrest of co-accused has been made by Assistant Sub-Inspector of Police, whereas Sections 73(e) and 74 of the Act mandate that search, seizure and arrest has to be made by a Police Officer not below the rank of Sub-Inspector of Police.

Considering the fact that the search, seizure and arrest was not made by competent authority and that the petitioner was not apprehended from the spot consuming liquor, there is no recovery from the possession of the petitioner and statement being made in paragraph 3 of the petition that the petitioner is not having any criminal antecedent, 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 6 weeks from today, on furnishing one surety to the satisfaction of the learned



Additional Sessions Judge 2<sup>nd</sup> -cum- Special Judge, Excise, Samastipur in connection with Hasanpur P.S. Case No. 192 of 2018.

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 Additional Sessions Judge 2<sup>nd</sup> -cum- Special Judge, Excise, Samastipur in connection with Hasanpur P.S. Case No. 192 of 2018, 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 is disposed of.

**(Dinesh Kumar Singh, J)**

DKS/-

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