

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20200 of 2020

Arising Out of PS. Case No.-17 Year-2020 Thana- CHAINPUR District- Kaimur (Bhabua)

Raj Kumar Bind S/o Late Bhagelu Bind R/o village- Lakhmanpur, P.S.-
Chainpur, District- Kaimur at Bhabua

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Tribhuwan Narayan

For the Opposite Party/s : Mr. Upendra Kumar

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 09-07-2020 The Court proceeding has been conducted

through virtual mode.

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

Learned counsel for the petitioner undertakes to
remove the defects within three weeks of the resumption
of the physical Court proceedings.

In case of non-removal of the defects within
undertaken period, the office shall place the matter
before the bench.

Heard learned counsel for the petitioner and



learned counsel for the State.

The petitioner is apprehending his arrest in a case registered for the offence punishable under Sections 30(a) of the Bihar Prohibition & Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act') and Rule 3 and 4 of the Bihar Excise (Mahua Flower) Rules, 2006.

The prosecution case as per the written report of Bhaskar Yadav, A.S.I. submitted to the S.H.O, Chainpur Police Station is to the effect that on 14.01.2020 during patrolling, a confidential information was received that in the village Kakari, certain people are engaged in trade of liquor. Consequently, raid was laid and certain people conveyed the informant that one Sukhi Pasi is selling liquor. Consequently, raid was laid in the house of Sukhi Pasi, when on seeing the police party, he tried to escape from the scene but on chase being made, he was apprehended and from the house of Sukhi Pasi, 10 Kgs of mahua flower, 15 litres of



fragmented mahua and 1.5 litres of mahua liquor were recovered. The apprehended accused person suggested that co-villager Nebulal is also engaged in manufacturing and selling liquor. Thereafter, the house of Nebulal was raided who was apprehended in inebriated condition and during search, from the house of Nebulal also, 5 litres of counter made liquor was recovered. Subsequently, when informant and other police officials were taking the apprehended accused persons to the police station, on the way, they received information that Rajkumar Bind, the petitioner has also concealed liquor in cane field where raid was laid and from cane field of the petitioner, 30 litres of fermented mahua, 13 litres of mahua flower, gas cylinder and other articles were recovered, leading to the registration of the present case against the petitioner and other co-accused persons.

It is submitted by learned counsel for the petitioner that seizure was made from the agricultural field of the petitioner which is an open area situated far



from his residential area, hence the recovery cannot be treated to be made from the conscious physical possession of the petitioner.

A statement has been made in para 3 of the petition that petitioner is accused in one other case of similar nature in which he is on bail.

Learned A.P.P. submits that recovery has been made from the cane field of the petitioner.

Considering the rival submissions of the parties, Section 73 of the Act prescribes the authorities who can make search and seizure and Section 73(e) of the Act mandates that search and seizure can be made by the police officer not below the rank of Sub-Inspector. There is nothing on record to suggest that such authority is given to the police officer of the rank of A.S.I. In the present case, admittedly search and seizure have been made by the police of the rank of Assistant Sub-Inspector of Police, hence, the entire search and seizure gets vitiated. Hence, on this score, this Court is



constrained to give the privilege of anticipatory bail to the petitioner,

Considering the aforesaid facts, let the petitioner, above named, in the event of his arrest or surrender before the Court below within a period of six weeks, be released on provisional anticipatory bail for a period of three months on furnishing one surety to the satisfaction of learned Additional Sessions Judge-III-cum-Special Judge, Excise, Kaimur at Bhabhua in connection with Chainpur P.S. Case No. 17 of 2020, subject to the conditions as laid down under Section 438(2) Cr.P.C.

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 thousands) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-III-cum-Special Judge, Excise, Kaimur at Bhabhua in connection with Chainpur P.S. Case No. 17 of 2020 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 next three months.

Accordingly the present application stands disposed of.

(Dinesh Kumar Singh, J)

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