

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18392 of 2020**

Arising Out of PS. Case No.-82 Year-2020 Thana- LAHERIYASARAI District- Darbhanga

RAM KRISHNA SAH @ RAM KISHAN SAH Son of Late Mahabir Sah
Resident of Village - Lagma, P.S.- Ghanshayampur, Distt - Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Virendra Kumar, Adv.

For the Opposite Party/s : Mr. Uma Shankar Prasad Singh, APP

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

2 03-06-2020 The matter has been taken up through virtual Court proceeding.

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

The present application has been preferred with a prayer for grant of bail in a case registered for the offence punishable under Sections 30(a) of Bihar Prohibition and Excise Act, 2016 as amended by Act 8 of 2018 (herein after referred to as the 'Act').

The prosecution case as per the written report of Pradeep Kumar Chaudhary, A.S.I. of Police submitted before the S.H.O., Laheriasarai Police Station is to the effect that on 06.02.2020, during patrolling, the informant received information that in Mandal Lodge, huge quantity of liquor has been stored. Consequently, a raid was laid and 97.92 litres of



Indian Made Foreign were recovered and on seeing the police, two persons who were trying to escape from the scene, were apprehended and disclosed their names as Rajiv Kumar and Ramkrishna Sah, the petitioner. On interrogation, the apprehended accused further suggested that co-accused, Pawan Kumar had stored the liquor for the purpose to sell by them.

It is submitted by learned counsel for the petitioner that the said recovery cannot be treated from the conscious physical possession of the petitioner. 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. The petitioner is languishing in custody since 07.02.2020 and the investigation has already been concluded. A statement has been made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent.

Learned APP for the State submits that the petitioner along with other other co-accused was apprehended from the place of seizure while they were trying to flee away from the scene on seeing the police.

Considering the nature of recovery by a police



officer who is not competent under the Act to seize and the fact that the investigation has already been concluded, coupled with statement made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent, 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 ADJ-II-cum-Special Judge (Excise), Darbhanga, in connection with Laheriasarai P.S. Case No. 82 of 2020.

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 ADJ-II-cum-Special Judge (Excise), Darbhanga, in connection with Laheriasarai P.S. Case No. 82 of 2020.



The learned Court below is at liberty to further extend the period of provisional bail if the lock down is not over in next three months.

(Dinesh Kumar Singh, J)

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