

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20097 of 2020

Arising Out of PS. Case No.-384 Year-2019 Thana- BARH District- Patna

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1. PANDIT JEE @ DOMAN SAHNI Son of Dhodhe Sahani Resident of Village - Bind Toli, Masaum ganj, P.S.- Barh, Dist.- Patna.
 2. Damodar Bind Son of Gangu Bind Resident of Village - Bind Toli, Masaum ganj, P.S.- Barh, Dist.- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Manoj Kumar Pandey

For the Opposite Party/s : Ms .Meena Singh

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 08-07-2020 The Court proceeding has been conducted through virtual mode.

Since the physical Court is not functional due to the present pandemic, Covid-19, the matter has been listed with defects.

Learned counsel for the petitioners undertakes to remove the defects within a period of three weeks on resumption of physical court proceeding.

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

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

The petitioners apprehends arrest 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 Rajendra Ram, A.S.I. Barh Police Station submitted before the S.H.O., Barh Police Station is to the effect that an information was received from the Sr. Officers that all the four accused persons, including the petitioners have concealed liquor in their houses and bushes. Consequently, the raid was laid and from the house of the petitioner No.2, Damodar Bind, 15 litres of Mahua liquor were recovered whereas from the heap of the wood, in front of the house of the petitioner no.1, Pandit Jee, 10 litres of country made liquor have been recovered.

It is submitted by learned counsel for the petitioners that so far as the recovery of liquor from the possession of petitioner no.1, Pandit Jee is concerned, the same has been made from an open area whereas recovery from petitioner no.2, Damodar Tanit is concerned, the same has been made from a joint family house. The entire seizure gets vitiated from the fact that none were present in the house and no family members have been made witness to the seizure list.

Learned APP for the State submits that the recovery



has been made from the possession of the petitioners.

Having heard learned counsel for the parties, this court of of the view that the cases under such stringent act, being Excise Act, the procedural safeguards have to be followed very meticulously. Section 73(e) of the Act mandates that the search and seizure can only be made by a police officer of the rank of S.I. and above all. In the present case, admittedly, the recovery has been made by A.S.I., Abhay Kumar Singh which vitiates the very seizure.

Considering the aforesaid fact the very seizure gets vitiated since prima facie it appears that the seizure has been made by an officer who is not authorized to do so under the Act and a statement made in paragraph no.3 of the petition that the petitioners are not having any criminal antecedent , let the petitioners above named be released on anticipatory bail for the present provisionally for a period of three months, in the event of arrest or surrender before the learned Court below within a period of four weeks from today, on furnishing one surety to the satisfaction of the learned Special Judge, Excise Act, Patna, in connection with Barh P.S. Case No. 384 of 2019 (Special Case No. 7299 of 2019), subject to the conditions as laid down under Section 438(2) of the 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 bail of the petitioners 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 Special Judge, Excise Act, Patna, in connection with Barh P.S. Case No. 384 of 2019 (Special Case No. 7299 of 2019).

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