

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20117 of 2020

Arising Out of PS. Case No.-73 Year-2020 Thana- AHIYAPUR District- Muzaffarpur

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MUKESH KUMAR @ MUKESH RAI Son of Bhagirath Ray Resident of
Village - Shiorahan Basudev, P.S.- Ahiyapur, District- Muzaffarpur

... .. Petitioner/s

Versus

THE STATE OF BIHAR Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Manoj Kumar

For the Opposite Party/s : Mr.Rajiv Nayan

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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 petitioner 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 petitioner and learned
APP for the State.

The petitioner apprehends arrest in a case registered
for the offences punishable under Sections 272, 273 of the



Indian Penal Code and 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 Abhay Kumar Singh, A.S.I. of Ahiyapur Police Station submitted before the S.H.O., Ahiyapur Police Station is to the effect that on 20.01.2020 during patrolling, the informant received information from a senior officer that in the village Pipraha Basude, in the house of Mukesh Rai, illicit liquore has been stored. Consequently, the house of the petitioner was raided and from the bathroom of the petitioner's house, total 99.720 litres of Indian Made Foreign Liquor were recovered. Consequently, the FIR was registered against the petitioner and his brother, Rajesh Rai.

It is submitted by learned counsel for the petitioner that the recovery of liquor has been made from the joint family house, hence, it cannot be treated to be made from the conscious physical possession of the petitioner. 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 since the recovery has been made from the bathroom of the petitioner,



hence, the anticipatory bail application is not maintainable.

Having heard learned counsel for the parties, this court of the view that the cases under such a stringent act, being the 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 not below 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 such lapses in the seizure, let the petitioner above named be released on anticipatory bail, 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, Muzaffarpur, in connection with Ahiyapur P.S. Case No. 73 of 2020, 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 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 Special Judge, Excise Act, Muzaffarpur, in connection with Ahiyapur P.S. Case No. 73 of 2020.

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