

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19506 of 2020**

Arising Out of PS. Case No.-83 Year-2020 Thana- GAYA MUFASIL District- Gaya

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Soni Devi Wife of Kanhai Manjhi Resident of Village - Kharhari, P.S.-
Muffasil, Distt.- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Arvind Kumar Singh

For the Opposite Party/s : Mr.

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

2 15-06-2020 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 on
behalf of the petitioner for grant of bail in connection with a
case registered for the offence punishable under Section 30(a) of
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., Lalan Kumar Rajak submitted to the Station House
Officer, Gaya Muffasil P.S, is to the effect that on 02.03.2020
during evening patrolling, a confidential information was
received that the petitioner is indulged in selling of illegal



liquor, consequently, the house of the petitioner was raided and from the cattle shed of the petitioner, total 50 litres of country made Mahua liquor were recovered.

It is submitted by learned counsel for the petitioner that the recovery has been made from an open area hence, the recovery cannot be treated from the possession of the petitioner. The petitioner is languishing in custody since 03.03.2020 and 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 recovery has been made from the cattle shed of the petitioner.

Considering the fact that Section 73(e) of the Act mandates that the search and seizure by a Police Officer not below the rank of Sub-Inspector of Police whereas, in the present case, seizure has been made by Assistant Sub-Inspector of Police, hence, the entire seizure gets clouded, period under custody and investigation being concluded, coupled with the 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 Special Judge, Excise Act, Gaya in connection with Gaya Muffasil P.S. Case No. 83 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 upon 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, Gaya in connection with Gaya Muffasil P.S. Case No. 83 of 2020.

The provisional bail of the petitioner will be confirmed after a certificate on affidavit is filed on behalf of the petitioner before the learned Court below to the effect that all the defect/s, as pointed out by the Stamp Reporter, have been removed.

The learned Court below is at liberty to further



extend the period of provisional bail if the court proceeding in physical mode will not resume in next three months.

(Dinesh Kumar Singh, J)

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