

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19525 of 2020

Arising Out of PS. Case No.-164 Year-2020 Thana- ARARIA District- Araria

1. RAHUL KUMAR Son of Subodh Yadav Resident of Village - Bela, P.S.- K. Nagar, District - Purnia.
2. Shashi Kumar Son of Awdesb Yadav Resident of Village - Bela, P.S.- K. Nagar, District - Purnia.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pramod Mishra

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

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 16-06-2020 The matter has been taken up through virtual Court proceeding.

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

The petitioners are languishing in jail since 26.2.2020 in a case registered for the offences punishable under Sections 30(a) and 38 of the Bihar Prohibition and Excise Act, 2016 as amended by Act 8 of Amendment Act, 2018 of the IPC (hereinafter referred to as the Act).

The prosecution case, as per the written report of Santosh Kumar Thakur, ASI of Police of Bairgachhi OP police station submitted to the SHO, Bairgachhi OP police station, is to the



effect that on 25.2.2020, during evening patrolling, confidential information was received that by a white coloured Indigo car, liquor is being transported. Consequently, the car in question was intercepted, from which, 165.180 litres of Indian Made Foreign liquor was recovered and both the petitioners were apprehended, leading to registration of FIR. The petitioner no. 1 was found to be the driver-cum-owner of the vehicle in question and he confessed that petitioner no. 2 was going to sell the said liquor after buying the same from co-accused Subodh Kumar.

It is submitted by learned counsel for the petitioners that in fact, the petitioners have maliciously been framed in this case and recovery has not been made from the conscious physical possession of the petitioners. Statement has been made in paragraph 3 of the petition that the petitioners are not having any criminal antecedent. The investigation has already been concluded.

Learned APP submits that the recovery has been made from the vehicle of the petitioners and they have confessed their guilt before the police.

Considering the fact that the Act being stringent Act which specifically lays down under Section 73(e) thereof, that the search and seizure can only be made by a police officer not



below the rank of Sub Inspector of Police but in the present case, admittedly, search and seizure has been made an officer of the rank of Assistant Sub Inspector of Police, the very search and seizure gets clouded, statement made in paragraph 3 of the petition that the petitioners are not having any criminal antecedent and the period in custody, let the petitioners above named be released on bail, for the present, provisionally for a period of three months on furnishing one surety each to the satisfaction of the learned Additional Sessions Judge II-cum-Special Judge, Araria in connection with Araria P.S. Case No. 164 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 petitioners 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) each with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge II-cum-Special Judge, Araria



including one surety given at the time of provisional bail.

The provisional bail of the petitioner will be confirmed after filing of a certificate on affidavit 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 already been removed.

The learned Court below will be at liberty to extend the period of provisional bail further if the Court proceeding in physical mode is not resumed in three months.

(Dinesh Kumar Singh, J)

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