

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19528 of 2020

Arising Out of PS. Case No.-42 Year-2020 Thana- NARDIGANJ District- Nawada

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1. GAUTAM KUMAR Son of Shivdani Mahto Resident of Gotrayan, P.S-Nardiganj, District-Nawada.
 2. Vivek Kumar Son of Mithilesh Prasad Resident of Gotrayan, P.S-Nardiganj, District-Nawada.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shashi Bhushan Singh

For the Opposite Party/s : Mr. J.N. Thakur, 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 19.2.2020 in a case registered for the offence punishable under Section 30(a) 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 Bishwanath Prasad Yadav, ASI of Police of Nardiganj police station submitted to the SHO, Nardiganj police station, is to



the effect that on 19.2.2020, a confidential information was received that liquor is being transported on a motorcycle, consequently, raid was laid and a motorcycle was intercepted and from the motorcycle in question, total 18.00 litres of Indian Made Foreign liquor was recovered and both the petitioners were apprehended. On disclosure made by the apprehended petitioners, raid was laid and from the pump house of co-accused Upendra Yadav, total 14.00 litres of Indian Made Foreign liquor were recovered.

It is submitted by learned counsel for the petitioners that the recovery has not been made from the conscious physical possession of the petitioners and the petitioners have been apprehended on the basis of mere suspicion. The petitioner no. 1 is accused in one other case and petitioner no. 2 is accused in two other cases apart from the present one, but the petitioners are on bail in all those cases. Statement to that effect has been made in paragraph 3 of the petition. The investigation has already been concluded.

Learned APP submits that the recovery has been made from the possession of the petitioners.

Considering the fact that the Act, being stringent Act which specifically lays down under Section 73(e) thereof,



that the search and seizure can 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 by an officer of the rank of Assistant Sub Inspector of Police, the very search and seizure gets clouded 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, Nawada in connection with Nardiganj P.S. Case No. 42 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,



Nawada 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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