

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22603 of 2020

Arising Out of PS. Case No.-177 Year-2020 Thana- BRAHMPUR District- Buxar

Rahul Thakur Son of Sri Ravindra Thakur Resident of Village- Chhotka
Diyan, P.O.- Diya Parmeshwar, P.S.- Krishnabrahm, District- Buxar.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shree Kant Pandey

For the Opposite Party/s : Mr. APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 25-08-2020 The Court proceeding has been conducted through
virtual mode.

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

Since the court proceeding in physical mode is
non-functional, due to present pandemic, COVID-19, the matter
is listed with defects.

Learned counsel for the petitioner undertakes to
remove the defects within three weeks of resumption of court
proceeding in physical mode. In the eventuality of non-removal
of defects within undertaken period, the office will place the
matter before the bench.

The petitioner is languishing in custody since
10.04.2020 in 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'), hence, the prayer for bail has been made through the present application.

The prosecution case, as per the written report of A.S.I., Ashok Kumar Sharma submitted to the Station House Officer, Krishna Brahm P.S., is to the effect that on 08.04.2020 at 6.00 A.M., a confidential information was received that two persons are carrying liquor on a motorcycle, consequently, a motorcycle was intercepted and two persons were apprehended, who disclosed their name as co-accused Bablu Rajak and Rahul Thakur, the petitioner and from the motorcycle in question, 20.520 litres of Indian Made Foreign Liquor were recovered.

It is submitted by learned counsel for the petitioner that the petitioner was apprehended on 08.04.2020 but he was remanded on 10.04.2020 which suggests by ante-dating the FIR has been lodged. There is nothing on record to suggest that A.S.I. was authorized to make search and seizure 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 possession of the petitioner.

Considering the fact that there is nothing on record to suggest that the informant being an A.S.I. was authorized to make search and seizure as Section 73(e) of the Act authorizes only the officer not below the rank of Sub-Inspector of Police to make search and seizure and investigation has already been 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 Additional Sessions Judge-II -cum- Special Judge (Excise), Buxar in connection with Brahmpur (Krishna Brahm) P.S. Case No. 177 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 Additional Sessions Judge-II -cum- Special Judge (Excise), Buxar in connection with Brahmpur (Krishna Brahm) P.S. Case No. 177 of 2020.

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.

Accordingly, the application stands disposed of.

(Dinesh Kumar Singh, J)

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