

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22211 of 2020

Arising Out of PS. Case No.-137 Year-2019 Thana- NAUTAN District- West Champaran

Birendra Yadav S/o Sri Indal Yadav Resident of Village- Budhwaliya, P.S.-
Nautan, Distt- West Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Aditya Nath Jha, Advocate

For the Opposite Party/s : Mr. Damodar Prasad Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 21-08-2020 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 four 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
07.10.2019 in a case registered for the offences punishable



under Sections under Sections 147, 148, 149, 341, 323, 353, 307 of the Indian Penal Code and 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., Soyab Khan of Nautan P.S. submitted to the Station House Officer, Nautan Police Station, is to the effect that on 04.04.2019 during evening patrolling a secret information was received that co-accused Indal Yadav, his son Birendra Yadav (the petitioner) and other family members were indulged in trade of illegal liquor. Consequently, a raid was laid and from the courtyard of co-accused Indal Yadav, 15 litres of country made liquor were recovered and from the motorcycle parked there, 8.460 litres of Indian Made Foreign Liquor were recovered. It is alleged that the accused persons started assaulting the informant and the raiding party. Subsequently, co-accused Indal Yadav, Punam Kumari and Shobha Devi were arrested and others managed to escape from the scene.

It is submitted by learned counsel for the petitioner that the recovery in the seizure list has been shown from the house of co-accused Indal Yadav, who is the father of the



petitioner, hence, it cannot be treated from the house of the petitioner. The seizure has been made by A.S.I. which is contrary to the mandate of Section 73(e) of the Act and there is nothing on record to suggest that the A.S.I. was authorized to make such seizure. Though the petitioner is accused in four other cases but he is on bail in all those cases and investigation has already been concluded.

Learned APP for the State submits that the recovery has been made from the house of the petitioner.

Considering the fact that the seizure list suggests that the recovery has been made from the house of the father of the petitioner, the petitioner was not apprehended from the spot and there is nothing on record to suggest that the A.S.I. has been authorized to make such seizure which is not the mandate under Section 73(e) of the Act, 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), Bettiah in connection with Nautan P.S. Case No. 137 of 2019.

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), Bettiah in connection with Nautan P.S. Case No. 137 of 2019.

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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