

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 22050 of 2020

Arising Out of P.S. Case No.-186 Year-2020 Thana-Kadamkuan District-Patna

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Tara Kant Mishra, male aged about 56 years, son of Sri Bindeshwar Mishra, resident of village +P.O.- Sirsi, P.S.-Nanpur, District-Sitamarhi, at present residing at Parsa Bazar, Chhatana, P.S.-Parsa Bazar, District-Patna.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner : Mr. Amrit Abhijat, Advocate

For the Opposite Party : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

2 24-07-2020 Filing through email of the present application has been accepted in view of the out-break of COVID-19 Pandemic and has been posted before me for hearing through video conferencing.

The application is apparently not in accordance with the provisions prescribed under the Patna High Court Rules, which do not contemplate filing of application through email. In spite of that, considering the extra-ordinary situation, filing of the present application has been allowed through email.

Considering the situation prevailing, the Court has considered, for the present, to ignore the deficiency in filing of the application.

Heard Mr. Amrit Abhijat, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned Additional



Public Prosecutor for the State.

The petitioner seeks bail in connection with Kadamkuan P.S. Case No.186 of 2020 arising out of Special Case No.3441 of 2020 registered under Sections 120B, 420 of the Indian Penal Code and Section 30(a) of the Excise Act. He has moved before this Court for grant of bail under Section 439 of the Code of Criminal Procedure after his prayer for grant of bail was rejected by this Court below. He is in custody since 13.05.2020.

The case of the prosecution is that one Nishi Kant Nishi, S.H.O.-cum-Inspector of Police, Kadamkuan Police Station apprehended some accused persons during investigation of Kadamkuan P.S. Case Nos.110 of 2019, 115 of 2020 and 771 of 2019. Out of them, one Shambhu Kumar @ Chhotu @ Sarkar disclosed during interrogation that he does business of liquor and he used to send liquor through Binay Kumar, Tinku Kumar and Intjar, all three residents of Ranchi. They used to send liquor through petrol tanker and one consignment is arriving in the night, which would be unloaded at Rajendra Nagar area of Patna town. He also disclosed that the said tanker has been sent with mobile no. 7294994727. At about 01:00 a.m. in the night, he got information that petrol tanker has reached Dhanus bridge and one Scorpio vehicle was escorting it. On the basis of the said information, the police party proceeded and found that the Scorpio vehicle stopped near water tank Road No.10, Rajendra



Nagar near Ram Narayan Shastri Road. The tanker also stopped there. It was found that three persons stepped down from the Scorpio vehicle and two persons from the tanker and one person climbed on the tanker and, at that time, the police force surrounded the two vehicles and apprehended all the five persons and from the petrol tanker 1783.5 liters of foreign liquor was recovered. The apprehended persons disclosed their names as Manoj Kumar, Umesh Kumar, Reyansh Kumar, Tara Kant Mishra and Birju Kumar. The police arrested them and registered the instant FIR and took up investigation.

It is submitted by Mr. Amrit Abhijat, learned counsel for the petitioner that the petitioner is a truck driver. He used to drive tanker of one Mantosh Kumar of village-Pakari, P.S.-Beur, District-Patna, but a few days back, the tanker developed some mechanical defect and, in the meantime, one Birju Kumar hired him for driving petrol tanker and the petitioner accepted the offer and drove the petrol tanker and was absolutely clueless about the liquor in the tanker. He contended that nothing was recovered from the physical possession of the petitioner. Though the police arrested him on 11.05.2020, he was forwarded before the court of Special Judge (Excise), Patna on 13.05.2020 i.e. after more than 58 hours, which violates his fundamental right guaranteed under Article 22(2) of the Constitution of India as well as legal right under Section 57 of the Code of Criminal Procedure. He contended that the



petitioner has got no criminal antecedent and has become a victim of circumstances.

On the other hand, Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor appearing for the State submitted that consumption, manufacture, storage, trade, transportation and sale of liquor are prohibited in the State of Bihar. He further contended that the petitioner is an active member of a gang dealing in illegal trade of liquor. He contended that the excuse made by him that he had no clue about the illicit liquor filled in the tanker is unbelievable. He further contended that there is no truth behind the allegation that the petitioner was forwarded before the court after 58 hours of his arrest.

Regard being had to the professional nature of the alleged offence and the active role of the petitioner in transporting a huge quantity of illicit liquor from another State for sale and distribution, I am not inclined to grant bail to the petitioner. The application is rejected.

Since, there is a State wide lockdown, the Court has considered it appropriate to adopt the following procedure for communication of the present order :-

- (i) The order, which has been dictated during the course of proceeding of the virtual court, shall be communicated to me on my email by the Secretary.
- (ii) The corrected copy of the order shall be transmitted



by me from my email id to the Secretary, which shall be treated to be an authentic copy of the order passed by this Court in the present proceeding.

- (iii) Hard copy of the order duly signed by me shall be preserved in my residential office for documentation and future use, if any.
- (iv) Let a copy of the order be sent to Mr. Amrit Abhijat, learned counsel for the petitioner also on his email.
- (v) Let steps be taken by the Secretary/registry for uploading of the present order without compromising with the norms of social distancing.

(Ashwani Kumar Singh, J.)

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