

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23907 of 2020

Arising Out of PS. Case No.-100 Year-2020 Thana- MAIRWAN District- Siwan

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1. SONU KUMAR Son of Brahama Resident of Village-Dwarika, P.S.- Dwarka, Sector-17, District-Najabgarh Delhi.
 2. Kuldeep Kumar Son of Suresh Mahto Resident of Village-Dwarika, P.S.- Dwarka Sector 17, District-Najabgarh Delhi.

... .. Petitioner/s

Versus

THE STATE OF BIHAR Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Virendra Kumar

For the Opposite Party/s : Mr.A.G.

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 22-09-2020 The court proceeding has been conducted through virtual mode.

Since the court proceeding is not functional in physical mode, due to present Pandemic, Covid -19, the present case has been listed with defects.

Learned counsel for the petitioners undertakes to remove the defect(s) within a period of four week of resumption of court proceeding in physical mode.

If the defect(s) is not removed within the undertaken period, the office will place the matter again.

Heard learned counsel for the petitioners and the State.

The petitioners are languishing in custody since



23.03.2020, in a case registered for the offence punishable under Sections 30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act, 8 of 2018 (hereinafter referred to as 'the Act').

The prosecution case, as per the written report of A.S.I., Shyamdeo Prasad, submitted to the S.H.O., Mairwa Police Station is to the effect that on 2.03.2020, during evening patrolling, a WagonR car was intercepted and the petitioners were apprehended when from the vehicle in question, total 128.640 litres Indian Made Foreign Liquor were recovered.

Learned counsel for the petitioner submits that the petitioners were not aware about the liquor being loaded in the vehicle in question. A statement has been made in paragraph no. 11 of the petition that the petitioners are having no concern either the alleged vehicle or with the seized liquor. The investigation has already been concluded. A statement has been made in paragraph no.3 of the petition that the petitioners are not having any criminal antecedent. It is further submitted that seizure has been made by an A.S.I., which is contrary to the provision of Section 73(e) of the Act, which mandates such seizure by an officer not below the rank of S.I. of Police. In the present situation, created due to pandemic, Covid-19, since the



court proceeding is not functional in physical mode, there is no likelihood of trial being concluded in near future.

Learned APP for the State submits that the petitioners were travelling by a vehicle from which the seizure has been made.

Considering the fact that the investigation has been concluded, recovery has been made by an A.S.I., which is contrary to the provision of Section 73(e) of the Act and there is nothing on record to suggest that such officer was authorized to make seizure under Section 73(6) of the Act, period under custody and the trial is not likely to be concluded due to the pandemic, Covid-19 coupled with statement made in paragraph no.3 of the petition to the effect that the petitioners are not having any criminal antecedent, let the petitioners 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 A.D.J.-II-cum-Special Judge, Excise Act, Siwan, in connection with Mairwa P.S. Case No. 100 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 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 including one surety given at the time of provisional bail of the like amount each to the satisfaction of learned A.D.J.-II-cum-Special Judge, Excise Act, Siwan, in connection with Mairwa P.S. Case No. 100 of 2020.

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

Accordingly, the present application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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