

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30949 of 2019

Arising Out of PS. Case No.-38 Year-2018 Thana- HATHIDAH District- Patna

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1. BINOD KUMAR Son of Ravindra Singh Resident of Village-Hathidah Dih Ward No.13, P.S.-Hathidah, Patna.
 2. Avinash Kumar @ Avnish Kumar Son of Shiv Chandra Singh Resident of Village-Hathidah Dih Ward No.13, P.S.-Hathidah, Patna.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Alok Kumar Singh

For the Opposite Party/s : Mrs. Sangeeta Sharma

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 10-06-2020 The matter has been taken up through virtual court proceeding.

Heard learned counsels for the petitioner and the State.

The present application has been filed with a prayer for bail 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 2018

A bench of this Court, vide order dated 12.06.2019, granted provisional bail to the petitioner who was in custody since 11.04.2019 and further directed the matter to be listed after disposal of S.L.P. (C) Nos. 27949-29763 of 2016, wherein the



vires of the Bihar Excise Act, 1915 and the Bihar Prohibition and Excise Act, 2016 is under challenge. The relevant portion of the order reads as follows:-

“Recently, the Full Bench of this Court in a case i.e. Criminal Appeal (SJ) No. 431 of 2019 (Ram Vinay Yadav vs. The State of Bihar) has noticed that vires of entire Excise Act as well as amended Excise Act is pending before the Hon’ble Supreme Court.

The Court is of opinion that since vires of entire Excise Act is already sub-judice before the Hon’ble Supreme Court, it would not be appropriate for this court to finally dispose of any case pertaining to Excise Act. However, at the same time, it would not be appropriate to allow a person to remain in custody for an indefinite period.

List this matter after disposal of S.L.P. (C) Nos. 27949-29763 of 2016 and connected writ petitions pending before the Hon’ble Supreme Court.

Till further order, the petitioners namely, Binod Kumar and Avinash Kumar @ Avnish Kumar are directed to be released provisionally on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Special Judge, Excise, Patna/concerned court in connection with Hathidah P.S. Case No. 38 of 2018 corresponding to Spl. Case No. 5016 of 2018.”

Due to present pandemic, Covid-19, the physical court proceedings in the Supreme Court are not being conducted, as a result, there is no likelihood of the



aforementioned S.L.P. being disposed of in near future. Hence, the application has been heard on merits.

As per the prosecution case, 43.125 litres of Indian Made Foreign Liquor were recovered from the house of co-accused Rabindra Singh. The name of the petitioner sprang up on the confession of co-accused person, as one of the persons, who, on seeing the police, fled away from the place of seizure.

It is submitted by learned counsel for the petitioners that the recovery has not been made from the conscious physical possession of the petitioners. 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 there is nothing on record to suggest that the petitioners have misused the privilege of provisional bail.

Learned APP submits that the name of the petitioners sprang up on the confession of co-accused person.

Considering the aforesaid facts and submissions of the parties, particularly the fact that there is nothing on record to suggest that the petitioners have misused the privilege of provisional bail, the provisional bail, granted to the petitioner vide order dated 12.06.2019 in connection with Hathidah P.S.



Case No. 38 of 2018 corresponding to Spl. Case No. 5016 of 2018, pending in the Court of learned Special Judge, Excise, Patna, is hereby confirmed.

Accordingly, the order dated 12.06.2019 stands modified to the extent of placing the matter after disposal of aforementioned S.L.P.

Accordingly, the present application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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