

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31796 of 2019**

Arising Out of PS. Case No.-179 Year-2018 Thana- GHANSHYAMPUR District- Darbhanga

Dilkhush Jha @ Dilkhush Kumar Jha Son of Bhagwan Jha Resident of
Village- Mahuwar, P.S.- Ghanshyampur, District- Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sameer Ranjan

For the Opposite Party/s : Mr.Gauri Shankar Gupta

**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 13.06.2019,
granted provisional bail to the petitioner who was in custody
since 12.04.2019 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 petitioner namely, Dilkhush Jha @ Dilkhush Kumar Jha is directed to be released provisionally on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional District & Sessions Judge-V-cum-Special Judge, Excise, Darbhanga in connection with G.O. Case No. 1037 of 2018, arising out of Ghanshyampur P.S. Case No. 179 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, 90 litres of Indian Made Foreign Liquor were recovered from the abandoned house of the petitioner.

It is submitted by learned counsel for the petitioner that the recovery has been made from the abandoned house of the petitioner, hence the recovery cannot be treated from the conscious physical possession of the petitioner. A statement has been made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent. It is further submitted that there is nothing on record to suggest that the petitioner has misused the privilege of provisional bail.

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

Considering the aforesaid facts and submissions of the parties, particularly the fact that there is nothing on record to suggest that the petitioner has misused the privilege of provisional bail, the provisional bail, granted to the petitioner vide order dated 13.06.2019 in connection with Ghanshyampur P.S. Case No. 179 of 2018, pending in the Court of learned Additional District & Sessions Judge-V-cum-Special Judge, Excise, Darbhanga, is hereby confirmed.

Accordingly, the order dated 13.06.2019 stands



modified to the extent of placing the matter after disposal of
aforementioned S.L.P.

The present application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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