

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35797 of 2019

Arising Out of PS. Case No.-358 Year-2019 Thana- PHULWARISHARIF District- Patna

BINAY KUMAR, Son of Lal Babu Ray, Resident of Village- Upharpur, P.S.-
Phulwari Sharif, Dist.- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Uday Shankar Pandey, Adv.

For the Opposite Party/s : Mr. Akbar Ali, APP

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 offences punishable under Sections 467, 468, 474, 420 and 120 B of the I.P.C. and 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 10.06.2019, granted provisional bail to the petitioner who was in custody since 08.04.2019 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 Binay Kumar is 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 Act, Patna in connection with Special Case No. 3671 of 2019, arising out of Phulwari Sharif P.S. Case No. 358 of 2019.”

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.

The prosecution case as per the self statement of Md. Qaisar Alam, S.H.O., Phulwarisarif Police Station is to the effect that on 06.04.2019 at 3.15 A.M., a secret information was received that 7 accused persons, including the petitioner, have brought huge quantity of liquor. Consequently, a raid was laid and one truck and two Scorpio vehicles were found parked in front of the house of the petitioner. Though on seeing the police, all the accused persons, including the petitioner, tried to flee away from the scene, but on chase being made by the police, three accused persons were apprehended and they disclosed their names as Aashish Rahane, Rajkamal and Vinay Kumar, the petitioner. The apprehended accused further disclosed the name of other co-accused persons who fled away from the scene as Arvind Kumar, Pramod Kumar, Santosh Kumar, Jitendra Rai and Jitu Kumar. Subsequently, during frisking, total 4700 litres of Indian Made Foreign Liquor was recovered from the truck.

It is submitted by learned counsel for the petitioner that the petitioner has no concern either with the illicit liquor or the truck in question from which recovery of illicit liquor has been made. A statement to that effect has been made in paragraph no.7 of the petition. 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 petitioner was apprehended from the place of seizure while he was trying to flee away on seeing the police.

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 10.06.2019 in connection with Special Case No. 3671 of 2019, arising out of Phulwari Sharif P.S. Case No. 358 of 2019, pending in the Court of learned Special Judge, Excise Act, Patna is hereby confirmed.

Accordingly, the order dated 10.06.2019 stands modified to the extent of placing the matter after disposal of aforementioned S.LP.

The present application is disposed of.

(Dinesh Kumar Singh, J)

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