

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35874 of 2019

Arising Out of PS. Case No.-43 Year-2019 Thana- FULKAHA District- Araria

NITISH KUMAR YADAV, Son of Bharat Lal Yadav, Resident of Village -
Ramghat, Koskapur, P.S. - Narpatganj, Dist.- Araria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ramesh Kumar Singh, Adv.

For the Opposite Party/s : Mr.Ashraf Ansari, 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 counsel 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 30(a), 41(1) and 45 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 21.03.2019 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 Nitish Kumar Yadav 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 learned Additional District & Sessions Judge 2nd -cum- Special Judge, Excise, Araria in connection with Fulkaha P.S. Case No. 43 of 2019, corresponding to Special Case No. 437 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.

As per the prosecution case, total 63.3 litres of Nepali liquor has been recovered from a motorcycle, being driven by the petitioner.

It is submitted by learned counsel for the petitioner that the petitioner has maliciously been framed in the present case at the behest of the police personnel. 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 of illicit liquor has been made from a motorcycle which was driven by 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 10.06.2019 in connection with Fulkaha P.S. Case No. 43 of 2019, corresponding to Special Case No. 437 of 2019, pending in the Court of learned Additional District & Sessions Judge 2nd -cum- Special Judge, Excise, Araria, 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)

Ashwini/-

U		T	
---	--	---	--

