

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35633 of 2019

Arising Out of PS. Case No.-100 Year-2019 Thana- BIKRAM District- Patna

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SIDESHWAR MANJHI Son of Late Budhan Manjhi Resident of Village -
Shivgarh, P.S.- Bikram, District - Patna.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Manish Kumar No2

For the Opposite Party/s : Mr.Parmanand Prasad

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 11-06-2020 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 30(a) and 37(b)(c) of the Bihar Prohibition and Excise
Act, 2016, as amended by Act 8 of 2018 and Section 363 of the
IPC.

A bench of this Court, vide order dated 10.06.2019,
granted provisional bail to the petitioner who was in custody
since 30.03.2019 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 petitioner namely Sideshwar Manjhi 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.3421 of 2019, arising out of Bikram P.S. Case No. 100 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 15 litres of Mahua liquor were recovered from a bag carried by the petitioner. The petitioner was apprehended in inebriated condition.

It is submitted by learned counsel for the petitioner that the recovery has not been made from the conscious physical possession of the petitioner. It is further submitted that seizure has been made by A.S.I. of Police who is not authorized to make search and seizure under Section 73(e) of the Bihar Prohibition and Excise Act, 2016, as amended by Act 8 of 2018, hence the entire seizure has become invalid. A statement has been made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent. It is also 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 possession 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 and the petitioner has remained on provisional



bail for a considerable period, the provisional bail granted to the petitioner vide order dated 10.06.2019 in connection with Special Case No.3421 of 2019, arising out of Bikram P.S. Case No. 100 of 2019, pending in the Court of learned Special Judge, Excise Act, Patna, is hereby confirmed.

Accordingly, the order dated 10.6.2019 stands modified to the extent of placing the matter after disposal of aforementioned SLP.

The present application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

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