

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35645 of 2019

Arising Out of PS. Case No.-63 Year-2019 Thana- GORIAKOTHI District- Siwan

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BHIKHAR MAHTO, Son of Daroga Mahto @ Dhudhur Mahto, Resident of
Village-Mustfabad, P.S.-Goriakothi, District-Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Tiwary, Adv.

For the Opposite Party/s : Mrs. Renuka Ratnakar, APP

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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
Sections Sections 37 (C) 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
13.04.2019 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 Bhikhar Mahto 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 Additional Sessions Judge-II cum Special Judge, Siwan in connection with Goreakothi P.S. Case No. 63 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, the petitioner was found in inebriated condition. The petitioner was put to breath analyzer test and found positive.



It is submitted by learned counsel for the petitioner that the petitioner has maliciously been framed in the present case. Though the petitioner is accused in four other case, but in those cases, he is on bail. 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 petitioner was found consuming liquor during breath analyzer test.

Considering the nature of accusation, 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 Goreakothi P.S. Case No. 63 of 2019, pending in the Court of learned Additional Sessions Judge-II cum Special Judge, Siwan, 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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