

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36149 of 2019

Arising Out of PS. Case No.-175 Year-2019 Thana- GOVERNMENT OFFICIAL COMP.
District- Saharsa

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1. SUDHIR PASWAN Son of Shiv Narayan Paswsan Resident of Village - Makuna, P.S.- Bihra, District- Saharsa
 2. Anil Mukhiya Son of Parmeshwari Mukhiya Resident of Village - Makuna, P.S.- Bihra, District- Saharsa

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pramod Mishra

For the Opposite Party/s : Mrs. Rita Verma

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

4 11-06-2020 The matter has been taken up through virtual court proceeding.

Heard learned counsels for the petitioners 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 Amendment Act 8 of 2018

A bench of this Court, vide order dated 11.06.2019, 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, both petitioners namely, Sudhir Paswan and Anil Mukhiya are 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, Saharsa in connection with Special (Excise) Case No. 175 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, 20 litres of country made mahua liquor were recovered from a motorcycle. The petitioners were the rider and pillion rider on the motorcycle in question.

It is submitted by learned counsel for the petitioner that the recovery has not been made from the conscious physical possession of the petitioner. A statement has been made in paragraph no.3 of the petition that the petitioners are 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 recovery has been made from the possession of the petitioners.

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 petitioners vide order dated 11.06.2019 in connection with Special (Excise) Case No. 175 of 2019, pending in the Court of learned Special Judge, Excise Act, Saharsa, is hereby confirmed.

Accordingly, the order dated 11.06.2019 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)

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