

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36111 of 2019**

Arising Out of PS. Case No.-252 Year-2018 Thana- BASOPATTI District- Madhubani

GYANENDRA KUMAR YADAV @ GYANCHANDRA KUMAR YADAV
S/o Baleshwar Yadav R/o Village/Muhalla- Chhatauni, P.S.- Basopatti, Distt.-
Madhubani

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar

For the Opposite Party/s : Mr.Bishweshwar Ram

**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 272 and 273 of the IPC 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 11.05.2019 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 Gyanendra Kumar Yadav @ Gyanchandra 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 Act, Madhubani in connection with Basopatti P.S. Case No. 252 of 2018.”

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 540 litres of Nepali liquor were recovered from four motorcycles. It is alleged that the co-accused persons escaped from the scene. One of the motorcycles is registered in the name of the petitioner.

It is submitted by learned counsel for the petitioner that the petitioner was not apprehended on spot but only because one of the motorcycles was registered in his name, the petitioner has been made accused in this case. There is no recovery from the conscious physical possession of the petitioner. Moreover, 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 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 has been made from the house 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 Basopatti P.S. Case No. 252 of 2018, pending in the Court of learned Additional District & Sessions Judge 2nd -cum- Special Judge, Excise Act, Madhubani, 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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