

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78191 of 2019

Arising Out of PS. Case No.-628 Year-2019 Thana- KATIHAR District- Katihar

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JITENDRA KUMAR YADAV @ JITENDRA KUMAR @ JITENDRA
YADAV, Son of Lalan Yadav, Resident of Village - Chowk Chama, P.S. -
Amdabad, Distt - Katihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar, Adv.

For the Opposite Party/s : Ms. Anita Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

3 29-06-2020 The matter has been taken up through virtual Court
proceeding.

Heard learned counsel for the petitioner and learned
APP for the State.

The petitioner has preferred the present application for
grant of bail in a case registered for the offences punishable
under Sections 420, 467, 468, 471, 482/34 of the I.P.C. and
Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as
amended by the Amendment Act 8 of 2018, (hereinafter referred



to as 'the Act').

The prosecution case got initiated on the basis of written report of Sanjay Yadav submitted before the Station House Officer, Katihar Police Station is to the effect that on 21.09.2019, during patrolling, a Scorpio vehicle was intercepted and from the said vehicle total recovery of 30.30 litre Indian Made Foreign Liquor and 4 litres of beer were made. Co-accused, Sanoj Kumar Paswan was apprehended from the vehicle in question. The apprehended person further disclosed the name of other person who escaped from the scene as co-accused, Nagesh Chaudhary and he further confessed that the said liquor was being brought from Bengal at the behest of the petitioner who is owner of the vehicle in question.

It is submitted by learned counsel for the petitioner that admittedly neither the petitioner was present at the place of seizure nor the recovery was made from the conscious physical possession of the petitioner and in fact, the vehicle of the petitioner has been used for transporting liquor, then it can only be a ground for confiscating the vehicle of the petitioner. It is further submitted that apart from the present case, the petitioner is accused in one other case.



Learned APP for the State submits that the recovery of liquor has been made from the vehicle of the petitioner and the apprehended accused confessed that the said liquor was being brought at the behest of the petitioner.

Having heard rival submissions of the parties from the opening line of the FIR it appears that the search and seizure has been made by an A.S.I. rank officer whereas Section 73(e) of the Act mandates that the search and seizure under the Act cannot be made by any police officer below the rank of S.I.

In the circumstances, the very seizure gets clouded since it has been made by an officer who is not authorized to do so under the act, this is not in dispute that the petitioner was neither apprehended from the spot nor was found travelling in the vehicle in question, let the petitioner above named be released on anticipatory bail for the present provisionally for a period of three months, in the event of arrest or surrender before the learned Court below from today, on furnishing one surety to the satisfaction of the learned Additional District & Sessions Judge 2nd -cum- Special Judge, Excise Act, Katihar, in connection with Nagar P.S. Case No.628 of 2019, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.



However, in view of the present pandemic, COVID-19, it will be open for the learned Court below to accept the bail bond on furnishing an undertaking by the surety, on photo copy of his Aadhar Card, to the effect that he is ready to become the bailor of the petitioner which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the petitioner will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two sureties, including one surety given at the time of provisional bail, of the like amount each to the satisfaction of the learned Additional District & Sessions Judge 2nd -cum- Special Judge, Excise Act, Katihar, in connection with Nagar P.S. Case No.628 of 2019.

The learned Court below will be at liberty to extend the period of provisional anticipatory bail further if the court proceeding in physical mode will not resume in next three months.

(Dinesh Kumar Singh, J)

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