

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17312 of 2021**

Arising Out of PS. Case No.-411 Year-2020 Thana- KISHANGANJ District- Kishanganj

Md Sahid @ Sahid Pradhan, (Male), aged about 36 years, son of Late Din Ali, resident of Village- Dhamighach, P.S.- Chopra, District- Uttar Dinajpur (West Bengal)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Radha Mohan Singh, Advocate
For the State	:	Mr. Dilip Kumar No. 1, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 14-06-2021

The matter has been heard *via* video conferencing.

2. The matter has been heard out of turn on the basis of motion slip filed by learned counsel for the petitioner on 10.06.2021, which was allowed.

3. Heard Mr. Radha Mohan Singh, learned counsel for the petitioner and Mr. Dilip Kumar No. 1, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Special Case No. 324 of 2020 arising out of Kishanganj PS Case No. 411 of 2020 dated 04.11.2020, instituted under Sections 272, 273, 420, 120-B of the Indian Penal Code and 30(a) and 41(i) of the Bihar Prohibition and Excise Act, 2016 (hereinafter



referred to as the 'Act').

5. The allegation against the petitioner is that he, along with another person, had handed over a truck loaded with 3584.640 litres of English liquor, which was brought in the State of Bihar.

6. Learned counsel for the petitioner submitted that in the FIR itself it is alleged that only the driver was caught with the truck in the State of Bihar and the registration number of the truck was also of the State of Bihar and he has stated that the petitioner, who is resident of West Bengal and another person of West Bengal had handed over the truck in the State of West Bengal and he had brought it to the State of Bihar and in the same breath, he also stated with regard to five other persons, who were residents of Bihar and they were doing the business on regular basis. Learned counsel submitted that first and foremost it is the confessional statement of the driver before the police under Section 161 of the Code of Criminal Procedure, 1973, which has no evidentiary value in law. Further, it was submitted that more importantly, even if the name of the petitioner is taken as the person, who had provided the liquor in the State of West Bengal, the transaction was perfectly legal as there is no violation of any law in the sale and purchase of



liquor in the state of West Bengal. It was submitted that nowhere in the FIR, the allegation is that the petitioner had handed over the liquor for being taken to his partners in the State of Bihar, which makes it clear that the business in the State of Bihar was being done by others and not the petitioner and at best, it can be said that the petitioner and other co-accused, who are resident of West Bengal used to provide liquor and is limited to handing over of the same in the State of West Bengal, which is absolutely legal and permissible. Learned counsel submitted that the petitioner has no criminal antecedent. Accordingly, learned counsel submitted that once no illegality with regard to conduct of the petitioner, even if it is taken at face value that what has been alleged in the FIR is correct, the bar of Section 76(2) of the Act would not apply as there is no legal basis to connect the recovered liquor to the petitioner. It was further submitted that the seized truck also did not belong to the petitioner.

7. Learned APP submitted that the driver has taken the name of the petitioner as one of the two persons, who had handed over the truck to him. However, it was not controverted that handing over was in the State of West Bengal and further that the registration number of the truck is in the State of Bihar and it did not belong to the petitioner and even in the FIR, it is



not alleged that the petitioner and the other co-accused of West Bengal had any partnership or dealing with five persons, who are residents of Bihar and also named in the FIR.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned Additional District & Sessions Judge, 2nd, cum Special Judge, Excise, Kishanganj, in Special Case No. 324 of 2020 arising out of Kishanganj PS Case No. 411 of 2020, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further, that (i) that one of the bailors shall be a close relative of the petitioner, (ii) that the petitioner shall also give an undertaking to the Court that he shall not indulge in any illegal/criminal activity, act in violation of any law/statutory provisions, tamper with the evidence or influence the witnesses and (iii) that the petitioner shall cooperate with the Court and police/prosecution. Any violation of the terms and conditions of the undertaking or failure to cooperate shall lead to cancellation of his bail bonds.



9. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the petitioner, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioner.

10. The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

J. Alam/-

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