

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 26908 of 2021

Arising Out of PS. Case No.-221 Year-2020 Thana- KALUAHI District- Madhubani

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Kuldeep Kumar Singh @ Kuldeep Singh @ Kuldeep Mahto, aged about 45 years, Gender-Male, Son of Teji Lal Mahto, Resident of Village - Kanhauli, Turkaha, PS- Khajauli, District- Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Subhash Kumar Jha, Advocate

For the State : Ms. Pronoti Singh, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 06-08-2021

The matter has been heard *via* video conferencing.

2. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the petitioner on 02.08.2021, which was allowed.

3. Heard Mr. Subhash Kumar Jha, learned counsel for the petitioner and Ms. Pronoti Singh, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Khajauli PS Case No. 221 of 2020 dated 20.10.2020, instituted



under Sections 272, 273, 414/34 of the Indian Penal Code and 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

5. As per the allegation, the police on information that a person was carrying liquor on a motorcycle reached the place, a person was seen coming on a motorcycle on which there was a plastic sack in the bag and after seeing the police, he had tried to run away but was caught and disclosed his name as Shambhu Sahani. It is alleged that he disclosed that he used to sell the liquor to the petitioner and from the sack 160 bottles containing 48 litres of *nepali* liquor was seized.

6. Learned counsel for the petitioner submitted that neither was he at the spot where the recovery was made nor the motorcycle or the recovered article belongs to him. It was submitted that the person who was caught is also not connected to the petitioner as he is of a different village. Learned counsel submitted that only on the basis of the statement of the arrested co-accused that too, before the police, he has been implicated in the present case. Learned counsel drew the attention of the Court to the seizure list in which though name of two witnesses have been mentioned but the signature is only of one witness, namely, Shakuni Kumar Ram whereas the other witness Jai Kishore



Paswan has not signed. Thus, it was submitted that there is serious lapse with regard to the recovery itself. Learned counsel submitted that the petitioner has no criminal antecedent. Summing up his arguments, learned counsel submitted that as there is nothing to connect the petitioner with the seized motorcycle or liquor, the bar of Section 76(2) of the Act, relating to maintainability of the present petition, would not apply.

7. Learned APP submitted that the arrested co-accused has stated that he used to get the wine and used to sell it to the petitioner and further, that the motorcycle was stolen and provided to him by the petitioner.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that as per the allegation itself, the arrested co-accused has only taken the name of the petitioner and has admitted that he used to bring the liquor, though for being sold to the petitioner and further that the motorcycle was stolen and also the seizure list not bearing the signature of the second independent witness despite his name being mentioned, both in the FIR as well as the seizure list, but signature of only one witness having been taken, the Court is inclined to grant pre-arrest bail to the petitioner.



9. Accordingly, 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 Sessions Judge, 2nd cum Special Judge, Excise Act, Madhubani in Khajauli PS Case No. 221 of 2020, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further, (i) that one of the bailors shall be a close relative of the petitioner, (ii) that the petitioner and the bailors shall execute bond with regard to good behaviour of the petitioner, and (iii) 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. Any violation of the terms and conditions of the bonds or the undertaking shall lead to cancellation of his bail bonds. The petitioner shall cooperate in the case and be present before the Court on each and every date. Failure to cooperate or being absent on two consecutive dates, without sufficient cause, shall also lead to cancellation of his bail bonds.

10. 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.

11. The petition stands disposed of in the
aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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