

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28570 of 2021

Arising Out of PS. Case No.-881 Year-2020 Thana- KHAGARIA District- Khagaria

Gaurav Kumar Ray, aged about 24 years (Gender-M), Son of Ram Nath Mahto, resident of Village- Purani Bazar, P.S.- Kursela, District- Katihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bimal Kumar, Advocate
For the State	:	Ms. Veena Kumari Jaiswal, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 13-08-2021

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 03.08.2021, which was allowed.

3. Heard Mr. Bimal Kumar, learned counsel for the petitioner and Ms. Veena Kumari Jaiswal, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Khagaria (Muffasil) PS Case No. 881 of 2020 dated 25.11.2020, instituted under Section 30(a) 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 six others was connected to the recovery of 1764 litres of



foreign liquor from a tanker which was caught by the police.

6. Learned counsel for the petitioner submitted that the only allegation that too on the version of the arrested driver before the police is that the petitioner had called him to West Bengal where the liquor was loaded and the petitioner had asked him to take it to Begusarai and one Pradeep Singh, friend of the petitioner, was said to accompany the tanker to Begusarai. Learned counsel submitted that the allegation is totally false and even if it is accepted that the petitioner had called the truck to West Bengal, any loading of liquor in the State of West Bengal not being an offence, he cannot be charged. It was further submitted that the driver was responsible for recovery as it cannot be expected that he would take such a big risk without there being any other person who is directly connected with the transaction and, thus, to save himself, the driver has implicated the petitioner. Learned counsel submitted that the petitioner has neither any connection with the recovered liquor nor to the seized tanker and has clean antecedent. Summing up his arguments, learned counsel submitted that in such view of the matter, the bar of Section 76(2) of the Act would not apply with regard to maintainability of the present petition.

7. Learned APP submitted that the arrested driver of



the tanker from which recovery has been made has stated that the petitioner had called him to West Bengal where liquor was loaded.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, as it appears that the petitioner is said to be the person who got the liquor loaded in West Bengal, that too, as disclosed by the arrested truck driver before the police and does not have any connection with the tanker from which recovery has been made and has clean antecedent, the Court is inclined to allow the prayer for pre-arrest bail.

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 Special Judge (Excise), Khagaria in Khagaria (Muffasil) PS Case No. 881 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)

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