

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29757 of 2021**

Arising Out of PS. Case No.-151 Year-2020 Thana- RAGHOPUR District- Vaishali

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Jitendra Kumar @ Jitendra Rai, Male, aged about 27 years, son of Surendra Rai, resident of Village - Litiyahi, P.S.- Raghopur (Rustampur O.P.), Distt.- Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rudal Singh, Advocate
For the State	:	Mr. Jai Narain Thakur, APP

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

Date : 03-08-2021

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 23.07.2021, which was allowed.

3. Heard Mr. Rudal Singh, learned counsel for the petitioner and Mr. Jai Narain Thakur, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Raghopur (Rustampur OP) PS Case No. 151 of 2020 dated 15.10.2020, 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 and two others



is that when the police on information that they were indulging in business of liquor had gone to the thatched hut in the *palani* of co-accused, Pintu Kumar, seeing the police, three persons had run away and from the said hut of co-accused Pintu Kumar, total 76.830 litres of liquor was seized.

6. Learned counsel for the petitioner submitted that the Sub Inspector of Police, who is the informant, has not disclosed as to how the petitioner was identified and further, that as per the FIR itself the thatched hut in the *palani* from which such recovery was made belongs to Pintu Kumar and not the petitioner. Learned counsel submitted that the petitioner has no connection with the said recovered liquor and has been falsely implicated as he is likely to contest the upcoming *Mukhiya* election. Learned counsel submitted that the petitioner has one case earlier against him under Sections 394 and 412 of the Indian Penal Code and in another case during investigation, he has been made accused which is under Section 30(a) of the Act only on suspicion that the recovery of liquor was from the banana field of the petitioner. It was submitted that in *Diyara* area, there is no demarcation of any boundary and wrongly it is alleged that the recovery was from the banana field of the petitioner. Thus, learned counsel submitted that there is nothing



to connect the petitioner to the recovered liquor and the bar of Section 76(2) of the Act would not apply.

7. Learned APP submitted that the petitioner has been named in the FIR as one of the persons, who had run away on seeing the police. However, it was not controverted that recovery is not from the land or premises owned by the petitioner.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the submissions of learned counsel for the petitioner. As far as the present case is concerned, only on account of name taken by the informant that the petitioner was also one of the persons, who had fled away without disclosing the source of identification, it cannot be said with certainty that the petitioner was among the persons, who had fled away, at least for forming a tentative view as to whether *prima facie* case is made out against the petitioner to attract the bar of Section 76(2) of the Act. 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-II-cum Excise Court, Vaishali at Hajipur, in Raghapur (Rustampur OP) PS Case No. 151 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.

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 petition stands disposed of in the



aforementioned terms.

(Ahsanuddin Amanullah, J)

J. Alam/-

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