IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39044 of 2020

Arising out of Trial No. 118, year- 2018, Prosecution Report No. 15
District East Champaran at Motihari

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Lalbabu Mian @ Lalbabu Ansari, Male, aged about 50 years, S/O Late Sabjan Miya Khan, R/O village- Raghunathpur, Near Godown, P.S. Raghunathpur, District East Champaran Bihar.

... ... Petitioner/s

Versus

The State of Bihar.

... ... Opp. Party/s

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Appearance :

For the Petitioner/s : Mr. Vikash Kumar Pankaj, Adv.

For the Opp. Party/s : Mr. Damodar Prasad Tiwary, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

2 02-06-2021 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Heard the learned counsel for the petitioner and Shri Damodar Prasad Tiwary, the learned APP for the State.

The petitioner apprehends his arrest in connection with Trial No. 118 of 2018 arising out of Prosecution Report No. 15 dated 26.09.1996 for the offence punishable under sections 47(a) of the Bihar Excise Act, 1915 and Section 26(b)

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of the N.D.P.S. Act, 1985.

The allegation is regarding a raid having been conducted at the hut of the petitioner, whereupon 175 grams granja was recovered.

The learned counsel for the petitioner has submitted that the petitioner is innocent, has been falsely implicated in the present case and is having a clean antecedent. The learned counsel for the petitioner has further referred to section 47(a) of the old Bihar Excise Act, 1915 to submit that the police officials have faltered in applying the provisions of the Excise Act inasmuch as neither there is any recovery of liquor nor any illicit manufacturing of liquor has been alleged qua the petitioner. It is further submitted that the amount of ganja recovered from the place in question is much less than the small quantity as defined in schedule to the NDPS Act, 1985, hence the petitioner be granted the privilege of anticipatory bail. Lastly, it is submitted that though the present case is a very old case but then the petitioner was not having any knowledge about the same, nonetheless, as soon as he got knowledge about the same, he had applied for grant of anticipatory bail, first before the learned court below and then before this Court.

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learned APP appearing for the

State, Shri. Damodar Prasad Tiwary, has vehemently opposed the prayer of the petitioner for grant of anticipatory bail.

Having regard to the facts and circumstances of the case, taking into account the materials available on record and considering the fact that neither any allegation of manufacture of illicit liquor has been levelled nor there is recovery of illicit liquor from the hut of the petitioner, this Court is of the view that the learned court below has committed a gross error and has erroneously passed the impugned order dated 28.08.2020, which is not only perverse but has been passed without any application of mind inasmuch as the anticipatory bail petition of the petitioner has been incorrectly held to be not maintainable in view of the bar under section 76(2) of the Bihar Prohibition and Excise Act, 2016.

Having regard to the facts and circumstances of the case and considering the fact that no case is made out either under the provisions of the old Excise Act, 1915 or even otherwise as also taking into account the fact that the quantity of ganja sized from the hut in question is much less than the "small quantity", as defined in the schedule to the N.D.P.S. Act, 1985, I deem fit and proper to admit the petitioner to the privilege of anticipatory bail

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Accordingly, in the event of arrest or surrender before the learned court below within a period of eight weeks from today, the petitioner, above-named, shall be enlarged on anticipatory bail on furnishing bail bonds of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of learned Special Judge (Excise Act), East Champaran, Motihari in connection with Trial No. 118 of 2018 arising out of Prosecution Report No. 15 dated 26.09.1996, subject to the conditions as laid down under section 438(2) of the Cr. P.C.

(Mohit Kumar Shah, J)

Tiwary/-

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