

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 8907 of 2021

Arising Out of PS Case No.-286 Year-2020 Thana- SAKRA District- Muzaffarpur

=====

Santosh Kumar Ray @ Santosh Kumar, aged about 34 years, Male, Son of Mahendra Ray, Resident of Village- Machhahi, PS- Sakra, District- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Hari Kishore Thakur, Advocate
For the State : Mr. Md. Aslam Ansari, APP

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 25-06-2021

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 21.06.2021, which was allowed.

3. Heard Mr. Hari Kishore Thakur, learned counsel for the petitioner and Mr. Md. Aslam Ansari, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Sakra PS Case No. 286 of 2020 dated 02.07.2020, instituted under Sections 30(a), 35 and 45 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').



5. The allegation against the petitioner is that when the police on specific information that he along with co-accused was dealing in liquor went to the spot, there was recovery from the house of co-accused, whereas in front of the house of the petitioner, from the motorcycle, there was recovery of two bottles of whiskey, each containing 750 ml. and when the womenfolk in the house of the petitioner were asked to produce papers, they could not do so.

6. Learned counsel for the petitioner submitted that there has been no recovery despite the police searching his house which clearly indicates that he is not involved in liquor trade. Learned counsel submitted that the motorcycle which was seized also does not belong to him. It was submitted that even the arrested co-accused Awadhesh Kumar Ray has not stated that the petitioner was his partner in any trade in liquor. Learned counsel submitted that the petitioner has no criminal antecedent. It was submitted that 36.255 litres of foreign liquor which were seized from the house of co-accused Awadhesh Kumar Ray were of a different brand i.e., Imperial Blue whiskey whereas the recovery from the motorcycle of two bottles was of McDowell No.1 whiskey of 750 ml. each. Thus, it was submitted that there being no recovery from the house and even from the motorcycle a



different brand being recovered, discloses that the petitioner was not in the business and the motorcycle could have been of any person who may have run away on seeing the police leaving the motorcycle there, but would not be sufficient to implicate the petitioner of such crime and, thus, bar of Section 76(2) of the Act would not apply as the liquor and the motorcycle from which it was recovered, cannot be connected to the petitioner.

7. Learned APP submitted that the motorcycle from which recovery has been made was found outside the house of the petitioner. However, he did not dispute the fact that the recovery from the motorcycle is of a different brand and that upon search of the house of the petitioner, no liquor was recovered.

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 Special Judge, Excise Act, Muzaffarpur in Sakra PS Case No. 286 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 application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	
U	
T	

