

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9553 of 2021

Arising Out of PS. Case No.-622 Year-2020 Thana- CHAPRA TOWN District- Saran

Kusum Mahto, aged about 48 years, Male, son of Kailash Mahto, resident of Adda no. 2, Roopganj P.S. - Chapra Town, District - Saran at Chapra.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Radha Mohan Singh, Advocate
For the State	:	Mr. Nityanand, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 02-08-2021

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 27.07.2021, which was allowed.

3. Heard Mr. Radha Mohan Singh, learned counsel for the petitioner and Mr. Nityanand, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Chapra Town PS Case No. 622 of 2020 dated 23.11.2020, instituted under Sections 30(a), 41(i)(ii) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

5. The allegation against the petitioner and others is that when the police on secret information that the petitioner, along with three others, had stored liquor at the bank of Ghaghra



river, reached the spot, many persons were seen fleeing away to the other side of the river by a boat in which the petitioner along with three others have been named on being identified and on search 50 litres of countrymade liquor kept in ten packets were recovered from the bank of the river.

6. Learned counsel for the petitioner submitted that there is no independent source of identification and only because the name of the petitioner and three others was known to the informant, who is an Assistant Sub Inspector of Police, he has been implicated and therefore, though many persons are said to have run away from the spot, but only four persons, including the petitioner, have been named, which clearly shows that implication is only because of the information received and not identification as the informant had no basis to identify the petitioner. It was submitted that neither recovery has been made from the premises owned by the petitioner nor is there anything to connect to him to the seizure shown. Thus, learned counsel submitted that there being no connection of the seized liquor with the petitioner, bar of Section 76(2) of the Act would not come into play. Further, it was submitted that he has no criminal antecedent.

7. Learned APP submitted that the petitioner was also



one of the persons, who had run away, when the police reached the spot from where recovery has been effected.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, as recovery is not from the property of the petitioner and he has no criminal antecedent, the Court is inclined to allow his prayer for pre-arrest bail. 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, Saran at Chapra, in Chapra Town PS Case No. 622 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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