IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47912 of 2021

Arising Out of PS. Case No.-213 Year-2021 Thana- GOVERNMENT OFFICIAL COMP. District- Gopalganj

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ENAYAT ALI Son of Late Md. Basim Resident of Mohalla- Bihari Sao, Lane, P.S.- Pirbahore, District- Patna.

... ... Petitioner.

Versus

THE STATE OF BIHAR

... ... Opposite Party.

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Appearance :

For the Petitioner : Mr. Binay Kumar Singh, Advocate.
For the State : Mr. Abhay Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

ORAL ORDER

4 09-02-2022 The applicant is given out of turn hearing on the ground of ailment of his wife.

The applicant is an accused in Excise Case No.213 of 2021 registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act.

The learned counsel for the applicant argued that the Excise Department has neither lodged the F.I.R. nor filed the complaint against the applicant in the subject crime. It is further argued that even the report as envisaged by sub sections 3 and 4 of Section 91 of the said Act is also not filed by the Excise Department. The applicant is undergoing pretrial detention from July, 2021 and therefore he is entitled for bail.

The learned A.P.P. argued that 155.520 liters of Indian Made Foreign Liquor came to be seized from the vehicle in which the applicant was travelling. He therefore opposes the application.

I have considered the submissions so advanced and also perused the materials placed before me.

Strangely enough the Respondent- prosecuting agency it seems has not lodged a report as envisaged by sub sections 3 and 4 of Section 91 of the Bihar Prohibition and Excise Act, 2016 against the applicant. What is done by the Excise Department is to take the applicant in custody and to apply to the concerned court for taking him in judicial custody apart from submitting the seizure list mentioning the seized articles. Prima facie, I am of the opinion that this cannot be compliance of mandatory provisions of Section 91 of the Bihar Prohibition and Excise Act, 2016.

Be that as it may, the investigation of the subject crime is reportedly over and therefore there is no reason for pretrial detention of the applicant. Therefore the following orders:

(i). The application is allowed.

(ii). The applicant/accused in Excise Case No.213 of 2021 registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, be released on bail on executing P.R. bond of Rs.10000/-(Rupees Ten Thousand) on furnishing surety of the like amount to the satisfaction of the trial court with the following conditions:

(I). The applicant should not extend any threat, promise or inducement to the persons acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer.

(II). The applicant should cooperate the trial in expeditious disposal of the trial against him.

(III). The applicant should not contact the members of the prosecuting party as well as witnesses in this case in any manner till conclusion of the trial.

(IV). The applicant should not repeat commission of similar offence in future and if he is found to be involved in commission of similar offence, the State is at liberty to apply for cancellation of bail granted to the applicant in the instant case.

The applicant to remove all office objections forthwith and the Registry to issue the certified copy of this order only after removal of office objections by the applicant/accused.

(A. M. Badar, J)

P.S./-

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