

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39928 of 2022

Arising Out of PS. Case No.-312 Year-2022 Thana- FATEHPUR District- Gaya

ADITYA KUMAR Son of Sri Sunderpal Singh Resident of - 626/B Subhashnagar, P.S. - Civil Lines, District - Meerut, Uttar Pradesh. At present Resident of - B-505, Vasikunj Apartment, Saguna More, P.S. - Rupaspur, Patna, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Saurav Anand, Advocate Ms. Preety Kunwar, Advocate
For the Opposite Party/s	:	Mr. Ram Sevak Choudhary

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 08-08-2022 Heard learned Senior Counsel for the petitioner and
learned A.P.P. for the State.

Let the defect(s), if any, be removed within a period
of four weeks.

The petitioner apprehends his arrest in a case
registered for the offence punishable under Section 51 of the
Bihar Prohibition and Excise (Amendment) Act, 2018.

Learned Senior Counsel for the petitioner submits that
petitioner is a person with clean antecedent and is an IPS Officer
of 2011 Batch and he is running away from law as now he is a
fugitive as he has been falsely implicated in a case under the
Excise Act under Section 51 which reads as follows:-

“51. Penalty on excise officer or police officer



refusing to do duty. - Any excise officer or police officer who, without lawful excuse, refuses to perform or withdraws himself from the duties of his office, unless expressly allowed to do so in writing by the Excise Commissioner or Collector, or unless he shall have given to his official superior officer two months' notice in writing of his intention to do so, or who shall be guilty of cowardice shall be punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees, or with both."

Learned Senior Counsel next submits that from bare perusal of Section 51 of the Excise Act, it would manifest that the maximum punishment is three months or fine which may extend to rupees ten thousand or with both. It is next submitted that as per Cr.P.C. offences carrying punishment less than three years are non-cognizable or bailable but Section 76(2) of the Excise Act makes the offences cognizable and non-bailable despite maximum punishment of the offence under Section 51 of the Excise Act being three months. Learned Senior Counsel next draws the attention of the Court to Section 8 and 9 of the Excise Act.

"8. Role of the Collector. - (1) The Collector of the district shall be responsible for the complete prohibition in accordance with the provisions of this Act and shall also ensure the administration of this Act in the area of his jurisdiction;
(2) The Collector shall also be responsible for all



matters connected with the effective prosecution of cases filed under the Act;

(3) The Collector shall also be competent to exercise the powers of the Excise Officer under the Act;

(4) The State Government may, by notification, confer the powers of the Collector to any officer, not below the rank of Inspector, of the excise department or any officer, not below the rank of Deputy Collector, of the revenue department, with such designations, powers and duties as the State Government may think fit.

9. Role of the Superintendent of Police. - The Superintendent of Police shall -

(a) assist the Collector in ensuring complete prohibition in accordance with the provisions of the Act;

(b) work under direct control and superintendence of the Collector;

(c) enforce and implement such lawful directions of the Collector or Excise Commissioner as issued under the Act;

(d) submit such reports and in such manner as the Collector or the Excise Commissioner may desire.”

Learned Senior Counsel next submits that from perusal of Section 8 of the Excise Act, it would manifest that it is the Collector of the District who is responsible for complete prohibition in accordance with the provisions of this Act and the Collector shall also be responsible for all matters connected with effective prosecution of cases filed under the Act. It is submitted that Section 9 defines the role of the Superintendent of Police and, accordingly, it is incorporated that the



Superintendent of Police shall assist the Collector in ensuring complete prohibition in accordance with the provisions of law.

Learned Senior Counsel submits that in the present case some liquor is alleged to have been seized by some police station and FIR was not instituted for which Ex-Senior Superintendent of Police, Gaya is being prosecuted. It is also submitted that the moment, it came to the notice of the Senior Superintendent of Police that FIR has not been instituted, he warned the concerned Station House Officer but the said warning has not been taken in its correct perspective by the State Authorities as they feel that the punishment inflicted was very light. Learned Senior Counsel next submits that admittedly no liquor was seized from the conscious possession of the Senior Superintendent of Police, Gaya nor he was present at the place of occurrence where the alleged seizure of liquor was made i.e. police station. Learned Senior Counsel next submits that the present FIR is nothing but a mockery and stares at the face of the bureaucrats of Bihar, they are completely vulnerable. It is next submitted that day is not far when any citizen aggrieved by the SSP, SP, DM and the Commissioners etc. of the District and Zone will throw bottles in their houses and then cases against them will also come to be instituted.



Learned Senior Counsel next draws the attention of the Court to Section 51 of the Excise Act again and submits that the offence under Section 51 becomes applicable only when the police officer without lawful excuse, refuses to perform or withdraws himself from the duties of his office, unless expressly allowed to do so in writing by the Excise Commissioner or Collector. Learned Senior Counsel submits that it is not the case of the prosecution that the petitioner in any manner was not willing to perform his duty. It was just that the petitioner being the Superintendent of Police of the district may not be knowing what was seized by the concerned police station as the Senior Superintendent of Police of the district is not omnipresent at each and every place.

Learned A.P.P. for the State opposes the prayer for anticipatory bail of the petitioner.

Considering the submissions made by the learned Senior Counsel for the petitioner, the petitioner above-named, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, be released on anticipatory bail on furnishing personal bail bonds with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/successor court in



connection with Fatehpur P.S. Case No. 312 of 2022, subject to
the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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