

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71159 of 2022

Arising Out of PS. Case No.-402 Year-2022 Thana- GOVERNMENT OFFICIAL COMP.
District- Lakhisarai

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ANAND SAW @ ANANT SAW @ ANANTA SAW SON OF LATE
BAJRANGI SAW R/O MOHALLA- PURANI BAZAR MAHAVIR
ASTHAN, P.S.- LAKHISARAI, DISTT.- LAKHISARAI

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar, Advocate

For the Opposite Party/s : Mr.Kumar Ranjit Ranjan, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 09-02-2023 Heard the learned counsel for the petitioner and
the learned APP for the State.

The petitioner seeks regular bail in connection
with Excise PS case no. 402 C2 of 2022 instituted for the offences
punishable under Section 37(I) of Bihar Prohibition and Excise
Act.

The allegation is regarding the petitioner having
been caught in a drunken condition and upon Breath Analyser Test
having been conducted, it was found that the petitioner had
consumed liquor.

The learned counsel for the petitioner submits that
the petitioner is innocent, has been falsely implicated in the
present case and is languishing in custody since 12.10.2022. The



learned counsel for the petitioner has further submitted that though the petitioner is an accused in one another case of similar nature but he is on bail in the said case. It is also submitted that it is an admitted fact that no illicit liquor has been recovered from the conscious possession of the petitioner and it has been merely alleged that the petitioner had consumed liquor.

Per contra, the learned APP for the State has vehemently opposed the prayer for bail. The learned APP for the State has further contended that though the petitioner is an accused in one another case of similar nature, but in the said case, the petitioner appears to have been convicted, as can be deciphered from the impugned order dated 18.10.2022 and probably after undergoing a simple imprisonment of one month, he might have been released on bail. In this regard, reference is made to amended Section 37 of the Bihar Prohibition & Excise Act, 2016, as amended by the Bihar Prohibition & Excise Act, 2022, which reads as follows :-

“ 37- Penalty for consumption of liquor –

(1) Whoever, in contravention of this Act or the rules, notification or order made there under consumes liquor or intoxicant at any place or is found drunk or found under influence of any intoxicant, within any premises or outside, shall be arrested immediately and produced before the nearest Executive Magistrate. He shall however be released if he pays a penalty as may be notified by the State



Government. Failure to pay such penalty shall invite a simple imprisonment of one month. Any intoxicant found in his possession shall be seized and destroyed as per section-57.

Provided that, in case of repeat offenders, the State Government may, by notification, prescribe additional penalty or imprisonment or both.

[Explanation 1:- It shall not be a right of the accused to be released upon payment of the required penalty. The Executive Magistrate, based upon a report by a police officer or an excise officer, may, for reasons to be recorded in writing, still refuse to release the accused on payment of penalty and commit him to such custody as he deems fit.]

[Explanation 2:- Such release shall not affect the outcome of the trial, if any, before the Special Court.]

(2) All offences under this section shall be disposed of through the procedure of summary trial by an Executive Magistrate who shall exercise the powers of judicial Magistrate second class for the purpose of this section. The State Government shall appoint such Executive Magistrate in consultation with the High Court.

(3) The enquiry of cases under this section shall be conducted by an excise officer or a police officer not below the rank of Assistant Sub-Inspector.

(4) Any person accused of committing offence under this section also commits an offence punishable under any other Act, then he shall also face the consequences as mentioned under that Act."



Having regard to the facts and circumstances of the case, considering the submissions made by the learned counsel for the parties and taking into account the materials available on record as also considering the period of incarceration of the petitioner apart from the fact that merely on the allegation of consumption of liquor and his failure to distinguish the difference in-between “grant of bail” and “being released after undergoing the sentence awarded upon conviction”, the petitioner has been denied the privilege of bail by the learned trial court, which in any view of the matter is harsh, hence, I deem it fit and appropriate to admit the petitioner to the privilege of bail.

Accordingly, the abovenamed petitioner is directed to be released on regular bail on furnishing bail bond of Rs. 10,000/- (Rs. Ten thousand) with two sureties of the like amount each to the satisfaction of learned court of Additional Sessions Judge V-cum-Exclusive Special Court-2, Excise Act, Laskhisarai in connection with Excise PS case no. 402 C2 of 2022.

Let a copy of this order be placed before the Hon’ble the Acting Chief Justice for perusal.

(Mohit Kumar Shah, J)

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