

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71387 of 2023

Arising Out of PS. Case No.-72 Year-2023 Thana- BALIGAON District- Vaishali

RAHUL KUMAR, aged about 23years, Male S/O LATE ASHOK SAH R/O
VILLAGE- BAHADURPUR CHIKNAUTA, P.S- BALIGAON, DISTT.-
VAISHALI.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr.Uma Shankar Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 07-11-2023 Heard Mr. Dharmesh Kumar, learned counsel
appearing on behalf of the petitioner and Mr. Uma Shankar
Prasad Singh learned APP for the State.

2. Petitioner seeks pre-arrest bail in connection with
Baligaon P.S.Case No.72 of 2023, dated 15.06.2023 registered
for the offences punishable under Sections 272, 273/34 of the
Indian Penal Code and Sectoin 30(A) of Bihar Prohibition and
Excise Act.

3. Prosecution story, in brief, is that during the course
of checking of vehicles, the police recovered 164.25 litres of
foreign liquor from a *Qualis* vehicle bearing Registration
No.BR11G5986, in which three accused persons including the
petitioner are stated to be present but on seeing the police party,



they managed to fled away, leaving the vehicle.

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner is innocent and has been falsely implicated in this case. It is further submitted that the petitioner is not the owner of the vehicle, in question, from which the recovery of illicit liquor was made and as such, he has no connection with the alleged recovered liquor. Learned counsel has further stated that the petitioner will co-operate in the investigation, if he is released on bail.

5. Learned APP for the State has vehemently opposed the prayer for grant of pre-arrest bail to the petitioner and has submitted that though the petitioner is not the owner of the vehicle in question, but he was alleged to be present in the vehicle along with other co-accused and they all managed to flee away after seeing the police party. Apart from this, petitioner has criminal antecedent of one case under the Excise Act, which shows that he is a habitual offender and as such, he does not deserve to be released on pre-arrest bail.

6. Having considered the rival submissions made on behalf of the parties as well as the fact that there is total failure of the Bihar Prohibition and Excise Act, 2016 in the State of Bihar and in spite of the check posts for checking the vehicles,



which are especially authorized to check the consignment by the excise authorities seems to be solely responsible to allow the vehicle at the check post to enter into the territory of the State of Bihar. In the present case, admittedly, the vehicle was seized in the district of Vaishali at Hajipur, whose territory is not connected either with the boundary of Nepal or any neighbouring State.

7. The Additional Chief Secretary, Prohibition Excise & Registration Department, Government of Bihar is directed to identify the Officer(s) of the Excise Department as well as the Police Officer(s), who were present at the check post, on the basis of the device installed at different designated check posts within the State of Bihar and if any laches is found on their part, appropriate action is required to be taken to stop violation of the statutory provision of the Bihar Prohibition and Excise Act, 2016.

8. I am of the opinion that for smuggling of huge quantity of liquor, only the petitioner can not be held responsible, without deep rooted connection with the State Official(s) and the smugglers, who are within the State of Bihar. The Additional Chief Secretary, Prohibition Excise & Registration Department, Government of Bihar must refer the



matter before the Chief Secretary, Government of Bihar to seriously look into the affairs of the prohibition and as to why the prohibition of excise has failed in the State of Bihar.

9. The petitioner has made out a case that he is neither the owner of the seized vehicle nor he was present at the time of alleged seizure of the liquor and further submission has been made on behalf of the petitioner that he will co-operate in the investigation, the petitioner is directed to be released on **provisional bail** in connection with Baligaon P.S.Case No.72 of 2023 on furnishing bail bond of **Rs. 2,00,000/- (two lacs)** with two sureties of the like amount from two respectable persons, who are residing within the jurisdiction of Baligaon Police Station, subject to conditions as laid down under Section 438(2) of the Cr.P.C. and as the learned court below deems fit and proper.

10. Let the name of Vikash Kumar, SC 11 along side the name of Mr. Uma Shankar Prasad Singh, learned counsel appearing on behalf of the State/respondent, appear in the Cause List.

11. As prayed for on behalf of the learned APP, re-notify the case after eight weeks (i.e. on 02.01.2024) among top ten cases before the appropriate Bench, on which date the



Additional Chief Secretary, Prohibition Excise & Registration
Department must ensure to file a detail action taken report with
respect to restricting smuggling and illegal trade of liquor in the
State of Bihar.

(Purnendu Singh, J)

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