

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46919 of 2024

Arising Out of PS. Case No.-207 Year-2019 Thana- VAISHALI District- Vaishali

Amit Ranjan @ Laddu Singh Son of Suryanath Singh R/O Vill.- Makhua,
P.S.- Vaishali, (Belsar O.P.), Dist.- Vaishali

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Alok Kumar Alok

For the Opposite Party/s : Mr. Sanjay Kumar

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

2 05-07-2024

Heard the parties

2.The petitioner is named in the F.I.R. and apprehending his arrest in connection with Vaishali (Belsar O.P.) P.S. Case No. 207 of 2019 registered for the offences punishable under Section 30(a), 32(2), 41(1) of the Bihar Prohibition and Excise Act, 2018.

3. The allegation against the petitioner is to be engaged in illegal trading/manufacturing of illicit liquor along with co-accused persons, where, there is recovery of 1872 litres of IMFL/country made liquor was made from the container.

4. It is submitted by learned counsel appearing on



behalf of the petitioner that earlier the bail petition of this petitioner was rejected by one of the Id. co-ordinate Bench of this Court through Cr. Misc. No. 87022 of 2019 vide order dated 09.06.2020 purely on the ground that same appears to be not maintainable in view of the Full Bench decision of this Court in case of **Ram Vinay Yadav vs. The State of Bihar**, reported in **2019(2) PLJR 1089 (F.B.)** and also by taking note of provisions as available under Section 76(2) of the Bihar Prohibition and Excise Act, 2016. It is submitted in this context that aforesaid decision and legal bar was considered by Hon'ble Supreme Court in the matter of **Sweta Kumari vs. State of Bihar** i.e., **Criminal Appeal No. 626 of 2022** arising out of **SLP (Crl) No. 3005 of 2022** dated 13.04.2022, where Hon'ble Supreme Court held that High Court must exercise its constitutional duty to protect the personal liberty, to consider such petition and there is no such embargo.

5. It would be appropriate to reproduce the Paragraph Nos. 5, 6 and 7 of aforesaid order as passed in the matter of **Sweta Kumari case (supra)** by Hon'ble



Supreme Court for the sake of better understanding
regarding maintainability of anticipatory bail in Excise cases:-

"5. The appellant is a 21-year old girl who was denied anticipatory bail by the High Court. Though there is an embargo in Section 76(2) of the statute, we see no reason why the High Court ought not to have exercised its power as a Constitutional court to grant anticipatory bail to protect the personal liberty of the accused, in a case such as the present where a 21 year old girl is sought to be prosecuted following the recovery of liquor bottles from a scooty which, though belonging to her, was not being driven by her at the relevant point of time. The refusal of the High Court to grant anticipatory bail in such cases leads to a proliferation of litigation before this Court. We are clearly of the view that the High Court must not abdicate its constitutional powers and must ensure that the personal liberty of the accused in appropriate cases has to be safeguarded. Many accused will not have the resources or the awareness to pursue their remedies before this court. Unless the High Court exercises its constitutional duty to protect personal liberty, they will continue to languish in jail.

6. We may also note at this stage a decision of the Full Bench of the Patna High Court in Ram Vinay Yadav vs The State of Bihar¹, where it has been held:

"It is not in dispute that Section 76(2) of the Act 2016 clearly bars the application of Section 438 of the Criminal Procedure Code in the offences



arising out of Act 2016 but from perusal of sub-section (2) of Section 76 of Act 2016, it would appear that above stated bar is applicable only if an offence under the Act 2016 is made out because in sub-section (2) of Section 76 of the Act 2016 the sentence "on an accusation of having committed an offence under this Act" has been used and, therefore, it is explicit clear that if a person commits an offence punishable under the Act 2016, in that event petition filed under Section 438 of the Cr.P.C. cannot be entertained but if a person does not commit any offence punishable under the Act 2016, then in that event, the said person has right to file a petition under Section 438 of the Cr.P.C. and the bar imposed under sub-section (2) of Section 76 of the Act 2016 shall not come in his way. Therefore, even if a person has been made accused in a case registered under the provisions of Act 2016 but from bare perusal of the accusation levelled against him does not disclose any offence of the Act 2016, the said person has right to file petition under Section 438 of the Cr.P.C. in spite of bar imposed under Section 76(2) of the Act 2016 because if the offence under the provisions of Act 2016 is not made out from the very face of the accusation, the bar imposed under Section 76(2) of the Act 2016 shall not come in picture."

7. Having regard to the facts and circumstances noted above, we confirm the ad-interim order by directing that in the event of the arrest of the appellant, she shall be released on bail forthwith subject to such terms and conditions as may be imposed by the trial court."



6. It appears that the earlier petition of petitioner was not rejected by taking into consideration the merit and same is now available for consideration while disposing the present anticipatory bail petition.

7. It is further submitted by the learned counsel for the petitioner that the name of the petitioner appears in this case on the basis of apprehended co-accused, namely, Jinish Kumar, where in furtherance of said disclosure nothing incriminating material recovered/ surfaced during the course of investigation as to connect the petitioner with present recovery of illicit liquor. While concluding arguments, it is submitted that above named petitioner is a man of clean antecedent and he is not even connected in any manner with alleged container from where illicit liquor was recovered.

8. Learned APP, while opposing the prayer of bail fairly conceded that present prayer of anticipatory bail appears maintainable in terms of legal report of ***Sweta Kumari case (supra)***

9. In view of aforesaid factual and legal submission and by taking note of the fact as alleged, Indian



made foreign liquor does not appear to be made from the conscious physical possession of the petitioner, accordingly, petitioner, in the event of his arrest or surrender before the court below within a period of four weeks, is directed to be released on bail, furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Session Judge-II-cum-Excise Court, Vaishali at Hajipur/concerned Court, where the case is pending in connection with Vaishali (Belsar O.P.) P.S. Case No. 207 of 2019, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Chandra Shekhar Jha, J)

Sudha/-

U		T	
---	--	---	--

