IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.84747 of 2023

Arising Out of PS. Case No.-809 Year-2023 Thana- AGAMKUAN District- Patna

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YOGESH KUMAR KAUSHIK @ YOGESH KUMAR SON OF RAJ BAHADUR KAUSHIK R/O MOHALLA- PAHARIPUR, KAJRAUTH, P.S.- KANKARBAGH, DISTRICT- ALIGARH, UTTAR PRADESH

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Siddharth Harsh, Advocate
For the Opposite Party/s : Mr. Ajit Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 07-03-2024 Heard Mr. Siddharth Harsh, learned counsel appearing on behalf of the petitioner and Mr. Ajit Kumar, learned APP for the State.

2. The petitioner seeks pre-arrest bail in connection with Agam Kuan P.S. Case No. 809 of 2023 registered for the offence punishable under Sections 30(a), 30(c), 36 and 41(1) of the Bihar Prohibition and Excise Act, 2018 (hereinafter referred to as the "Act").

3. As per the allegation made in the FIR, the petitioner, who is the godown manager of TCI Freight, a registered company, having its godown in the State of Bihar and GST number is reflected on the true copy of CNS No.847513800, has been made accused under Sections 30(a),

30(c), 36 and 41(1) of the Act, allegedly for having possessed with total quality of 1385 litres of spirit and other articles. A seizure list was prepared pursuant to the seizure.

4. Learned counsel appearing on behalf of the petitioner submitted that the consignment has been booked by the consigner/Apollo Life Science, having its registered office under the State of Maharashtra, to be delivered to the consignee/ *V.N. Mini Mart* Private Limited, Patna in the State of Bihar. The consigner and the consignee are registered under the GST Act and pursuant to the sale note, the above consignment was booked to be transported by the petitioner's company, namely, TCI Freight which is also a registered company. Learned counsel further submitted that the consignment was loaded on the lorry and at the time of loading of the goods, e-way bill was also generated online in accordance with the provision of GST Act and all the documents for the said purpose including GST tax payer account number and other requirement by the petitioner's company was furnished which is also responsible for generation of e-way bill. In spite of the fact that the petitioner had produced all the required documents to the officer affecting seizure, ignoring the said fact and without taking into account the documents furnished with respect to the total

quantity of 1385 litres of “cleaner” manufactured by one Apollo Life Science, which is having requisite drug license to manufacture and the consignee/V. N. Mini Mart is also a registered dealer and have also license to possess such article to be sold by it within the State of Bihar. Learned counsel further submitted that the liquor is prohibited in the State of Bihar, whereas the items, which have been seized are non-portable in nature, as such, the entire seizure fails on these grounds. In these backgrounds, learned counsel submitted that there is no question that the petitioner is either involved in smuggling of liquor inside the State of Bihar or without any authority of law, he has stored illegally any prohibited item, which attracts the provision of the Act. In these backgrounds, learned counsel submitted that even considering the items are prohibited items under the provision of the Act, the petitioner is not responsible for the reason that the consigner and the consignee are known and they can only be held responsible for having booked or received the items, which were unloaded in the godown of the petitioner’s company for being delivered to the consignee. Learned counsel further submitted that the petitioner, being the officer of the company, cannot be held responsible, taking into consideration the law laid down by the Apex Court in the case of **Dayle**

De'souza Versus Government of India through Deputy Chief Labour Commissioner (C) and another (Criminal Appeal a/o SLP (Crl.) No.3913 of 2020). In these backgrounds, learned counsel submitted that petitioner being the manager of the transport company, namely, T.C.I. Freight deserves to be released on bail.

5. *Per contra,* learned APP for the State has vehemently opposed the prayer for grant of pre-arrest bail to the petitioner submitting that the petitioner is the manager of a transport company which is also responsible for generating e-way bill for its transportation from the place of booking of the consignment. Evidently, in the present case, consignment was booked from Secunderabad to be delivered in Patna to one consignee, namely, V. N. Mini Mart and has purposely generated the e-way bill in the garb of cleaner. Alcohol is prohibited in the State of Bihar and, as such, attracts the provision of the Act.

6. Having considered the rival submissions made on behalf of the parties, it is not unknown in the State of Bihar that liquor is prohibited and authorities have also failed to implement the law in its true spirit. From perusal of the allegation made in the FIR, it is admitted that the search was

conducted at the godown of the transport company, namely, T. C. I. Freight of which the petitioner is godown manager and cleaner was found, which according to the authority, appeared to be spirit and it has not been mentioned in the seizure list whether the spirit is Industrial spirit or portable liquor. From the consignment note, it appears that the quantity of 1385 litres of "cleaner" was booked by Apollo Life Science, which was registered in the State of Maharashtra, which has manufactured cleaner containing spirit and consignment was booked by the said company to the consignee/ V.N. Mini Mart, which is registered in the State of Bihar. I have also perused the documents, such as, tax invoice, as well as, consignment note and the details mentioned in it also reflects that cleaner was booked of whose total estimated value is Rs.26,381/- for which GST has been paid in accordance with the provision of GST Act. The petitioner is the manager of the transport company which is registered under the GST Act and having its registered office in the Hyderabad, which is division of transport corporation of India having its office in Secunderabad. The seizure does not disclose whether the items seized are spirit/ liquor. The petitioner has claimed the same to be cleaner which is not fit for human consumption, and considering the law laid down by the Apex Court in the case of **Dayle De'souza (supra),** I am of the opinion that the petitioner has, *prima facie*, made out a case to be released on pre-arrest bail.

7. The petitioner is directed to be released on pre-arrest bail, in the event of his arrest or surrender before the Court below within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, Excise, Patna City, District, Patna in connection with Agam Kuan P.S. Case No. 809 of 2023, subject to the condition as laid down under Section 438(2) of the Cr.P.C.

(Purnendu Singh, J)

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