

(2020) 11 PAT CK 0028

Patna High Court

Case No: Criminal Miscellaneous No. 25395 Of 2020

Md. Hatim

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Nov. 5, 2020**Acts Referred:**

- Bihar Prohibition And Excise Act, 2016 - Section 30(a), 38, 41, 45
- Code Of Criminal Procedure, 1973 - Section 438(2)

Hon'ble Judges: Ahsanuddin Amanullah, J**Bench:** Single Bench**Advocate:** Mukesh Kumar Rana, Yogendra Kumar Singh**Final Decision:** Disposed Of

Judgement

1. The matter has been heard via video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Mukesh Kumar Rana, learned counsel for the petitioner and Mr. Yogendra Kumar Singh, learned Additional Public Prosecutor

(hereinafter referred to as the "APP" for the State.

3. The petitioner apprehends arrest in connection with Special Case No. 746 of 2019 arising out of Sikty PS Case No. 83 of 2019 dated 11.06.2019,

instituted under Sections 30(a)/38/41/45 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the "Act").

4. The allegation against the petitioner and five others is of trying to smuggle Nepali liquor into India.

5. Learned counsel for the petitioner submitted that co-accused Mushtaq, who was caught by the SSB party and the allegation that five other persons

had run away after leaving behind sacks containing illicit liquor, the petitioner was named as one of the persons who had run away. It was submitted that for the same offence, based on the same written report, two FIRs were lodged i.e., one under the Act and another under various provisions of the Indian Penal Code for assault, being Sikty PS Case No. 84 of 2019. It was submitted that besides these two cases, the petitioner has no other criminal antecedent. Learned counsel submitted that at 11:00 PM at night, the SSB party claim of having intercepted the accused and one co-accused being caught and other five persons managing to run away, is unbelievable, as in the darkness of the night, the police personnel could identify the number of persons or witness their act. It was submitted that only on the basis of confessional statement of co-accused Mushtaq the petitioner has also been made accused but there has not been any recovery from him. Further, it was submitted that there is no overt act specifically alleged against the petitioner. Learned counsel submitted that similarly situated co-accused Izabul has been granted anticipatory bail by a co-ordinate bench by order dated 20.11.2019 in Cr. Misc. No. 73776 of 2019 and Dildar has also been granted anticipatory bail by order dated 09.09.2020 in Cr. Misc. No. 16564 of 2020.

6. Learned APP submitted that the petitioner was also party to smuggling illicit liquor from Nepal. However, he did not controvert the fact that the name of the petitioner has come only on the statement of co-accused Mushtaq who was caught and there is no specific overt act alleged against the petitioner.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned 2nd Additional Sessions-cum-Special Judge, Araria in Special Case No. 746 of 2019 arising out of Sikty PS Case No. 83 of 2019, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further, that (i) one of the bailors shall be a close relative of the petitioner, (ii) the petitioner and the bailors shall execute bond

with regard to good behaviour of the petitioner, and (iii) the petitioner shall also give an undertaking to the Court that he shall not indulge in any criminal activity, tamper with the evidence or influence the witnesses. Any violation of the terms and conditions of the bonds or the undertaking shall lead to cancellation of his bail bonds. The petitioner shall cooperate in the case and be present before the Court on each and every date. Failure to cooperate or being absent on two consecutive dates, without sufficient cause, shall also lead to cancellation of his bail bonds.

8. The application stands disposed off in the aforementioned terms.