

(2021) 04 PAT CK 0065

Patna High Court

Case No: Criminal Miscellaneous No. 33951 Of 2020

Ramesh Rai

APPELLANT

Vs

State Of Bihar

RESPONDENT

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**Date of Decision:** April 9, 2021**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 414
- Bihar Prohibition And Excise Act, 2016 - Section 30(a), 76(2)
- Code Of Criminal Procedure, 1973 - Section 438(2)

**Hon'ble Judges:** Ahsanuddin Amanullah, J**Bench:** Single Bench**Advocate:** Md. Harun Quareshi, Nirmala Kumari**Final Decision:** Disposed Of

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**Judgement**

1. The matter has been heard via video conferencing.
2. Heard Mr. Md. Harun Quareshi, learned counsel for the petitioner and Ms. Nirmala Kumari, learned Additional Public Prosecutor (hereinafter referred to as the "APP"™) for the State.
3. Learned counsel for the petitioner submitted that he may be permitted to make correction in the prayer portion of the application in which the description of the Court concerned has been mentioned as "2nd Additional Sessions Judge-cum-Special Judge, Excise, Gopalganj" which is an inadvertent typographical error and should be "2nd Additional Sessions Judge-cum-Special Judge, Excise, Saran".
4. Prayer allowed.
5. Let such change be incorporated in the main application.

6. The petitioner apprehends arrest in connection with Parsa PS Case No. 58 of 2020 dated 02.03.2020, instituted under Sections 414/34 of the Indian

Penal Code and 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the "Act").

7. The allegation against the petitioner and two others is that on secret information that they had stored huge quantity of foreign liquor for being sold

during Holi, when the police had gone, three persons were seen on coming on a motorcycle but on seeing the police they ran away and from a sack

tied to the motorcycle there was recovery of 41.970 litres of English wine. It is further alleged that under the cover of darkness, the persons fled away

and the Chowkidar had identified the persons, including the petitioner.

8. Learned counsel for the petitioner submitted that he does not have any criminal antecedent and is not connected with the liquor recovered by the

police from the motorcycle and even the motorcycle did not belong to him. Learned counsel submitted that from the FIR itself it is clear that the

seizure is said to have been made at 10:30 pm and the name of the persons who had accompanied the police for the said raid has been mentioned, but

the Chowkidar has not been mentioned and, thus, the identification by the Chowkidar is highly suspicious and apparently not true. It was submitted that

the presence of the Chowkidar at the spot when he was not with the police personnel has not been explained anywhere and further that at 10:30 pm at

night such identification on the basis of torch light is also unbelievable when it is not stated that the Chowkidar had the torch with him and had seen the

culprits. It was submitted that in view of there being no connection whatsoever of the petitioner with the liquor recovered, the bar of Section 76(2) of

the Act would also not be attracted in the present case.

9. Learned APP submitted that the petitioner was one of the persons who was identified by the local Chowkidar. However, she could not controvert

the fact that the presence of the Chowkidar has not been explained as he is not named as one of the persons who was with the police party when the

motorcycle was intercepted and the accused had run away.

10. 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 Judge-cum-Special Judge, Excise, Saran

in Parsa PS Case No. 58 of 2020, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further (i) that

one of the bailors shall be a close relative of the petitioner, (ii) that the petitioner and the bailors shall execute bond with regard to good behaviour of

the petitioner, and (iii) that the petitioner shall also give an undertaking to the Court that he shall not indulge in any illegal/criminal activity, act in

violation of any law/statutory provisions, 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.

11. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the petitioner, to the notice of the Court

concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioner.

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