

Kishun Patel @ Thekedar vs The State Of Bihar on 8 October, 2024

Author: Alok Kumar Pandey

Bench: Alok Kumar Pandey

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73260 of 2024
Arising Out of PS. Case No.-111 Year-2024 Thana- Raghunathpur Excise
=====

Kishun Patel @ Thekedar Son of Late Mohan Patel Resident of Village-
Nawada, PS.- Raghunathpur, District- Patna

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :
For the Petitioner/s : Mr.Ajay Kumar Tiwary, Adv.
For the Opposite Party/s : Mr.Damodar Prasad Tiwary, APP

=====

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

2 08-10-2024

As prayed for, learned counsel for the petitioner is permitted to make necessary correction in the provision of law under which the present bail petition has been filed as well as in para 12 of the petition, during the course of the day.

2. Heard learned counsel for the petitioner and learned A.P.P. for the State.

3. Learned A.P.P. for the State submits that the F.I.R. in connection with Raghunathpur (Excise) P.S. Case No. 111 of 2024 for the alleged occurrence has been registered on 28.08.2024 under the provision of Section 154 of Cr.P.C. whereas the Bhartiya Nagarik Suraksha Sanhita, 2023 has already come into force w.e.f. 01.07.2024.

4. In the light of the aforesaid fact, let a report be called for from the Superintendent of Police, Siwan as to why Patna High Court CR. MISC. No.73260 of 2024(2) dt.08-10-2024 the F.I.R. in the aforesaid case has not been registered under the relevant provision of the Bhartiya Nagarik Suraksha Sanhita, 2023 as the same has come into force w.e.f. 01.07.2024. The aforesaid report must reach to this court within a period of two weeks.

5. Learned counsel for the petitioner submits that the concerned police official has wrongly applied the provision of law for instituting the F.I.R. On that count, the petitioner cannot be allowed to suffer as liberty of petitioner is paramount. He further submits that while rejecting the prayer for bail of the petitioner, the concerned jurisdictional court has not taken into account the aspect of institution of F.I.R. wrongly under the old provision of Section 154 of Cr.P.C. despite the fact that the Bhartiya Nagarik Suraksha Sanhita, 2023 came into force w.e.f. 01.07.2024.

6. The petitioner seeks bail in connection with Raghunathpur (Excise) P.S. Case No. 111 of 2024 registered for the offences punishable under Sections 30(a), 41 of the Bihar Prohibition and Excise Act, 2016 and amended Rules 2022.

7. As per prosecution case, there is alleged recovery of 224 liters illicit liquor from the bank of Nawada Ghat. Three co-accused persons, namely, Shivnath Bin, Sawali Bin and Patna High Court CR. MISC. No.73260 of 2024(2) dt.08-10-2024 Dharmendra Bin were apprehended on the spot. Apprehended co-accused Shivnath Bin disclosed the name of the petitioner, who fled away from the place of occurrence.

8. Learned counsel for the petitioner submits that petitioner is innocent and has not committed any offence as alleged in the first information report. Petitioner's name has been surfaced in this case upon the disclosure of said apprehended co-accused persons and except the said disclosure of co-accused persons, there is nothing on the record to connect the petitioner with the alleged occurrence. Seizure list has not been made as per law. Petitioner has criminal antecedent of two cases. Petitioner is in custody since 07.09.2024.

9. The learned A.P.P. for the State opposes the prayer for bail of the petitioner.

10. Considering the facts and circumstances of the case, period of custody, argument advanced on behalf of both sides and the materials available on record, let the petitioner above named be released on provisional bail till further orders on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of Exclusive Special Judge, Excise Court No. II, Siwan in connection with Raghunathpur (Excise) P.S. Case No. 111 of 2024, Patna High Court CR. MISC. No.73260 of 2024(2) dt.08-10-2024 subject to following conditions:-

(i) One of the bailors shall be either father or mother or sister or brother or wife or the person who has sworn the affidavit in bail application.

(ii) Petitioner will co-operate in trial and will re-

main present on all dates and absence for two consecutive dates without appropriate permission, would be a ground for cancellation of bail by the learned Trial court itself.

(iii) If the petitioner tamper with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

11. List this matter on 25.10.2024.

(Alok Kumar Pandey, J) mcverma/-

U T