

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14308 of 2022**

Arising Out of PS. Case No.-790 Year-2019 Thana- KUDHNI District- Muzaffarpur

Niraj Singh @ Neeraj Kumar Singh, son of Asarfi Singh @ Asarphi Prasad
Singh, resident of Village- Dwarikanathpur, P.S.- Karja, District- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Upendra Kumar Chaubey, Advocate.

For the State : Mr. Vikash Kumar, SC-11.

Mr. Ajit Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

5 12-10-2022 Heard Mr. Upendra Kumar Chaubey, learned counsel
appearing on behalf of the petitioner and Mr. Vikash Kumar,
learned SC-11, Mr. Ajit Kumar and Mrs. Asha Devi, learned
A.P.Ps. for the State.

2. Taking into consideration the materials which have
come in course of hearing of the present bail application reveals
that the State authorities have failed to implement complete
prohibition in the State of Bihar to safeguard the health, life and
liberty of the people at large and their confidence and as such
this order is being passed in continuation of the order dated
15.06.2022. This Court had directed the Chief Secretary, Bihar
to submit a detailed action taken report on or before 27.07.2022



with respect to steps taken for strict implementation of the Bihar Prohibition and Excise Act, 2016 as amended upto date in its true spirit and the disciplinary action against the officials especially empowered to implement the policy. This Court has seen the rising trend of manufacturing and smuggling of liquor due to the deliberate inaction of the State officials.

3. Mr. Vikash Kumar, learned SC-11 and Mr. Ajit Kumar, learned A.P.P. appearing in the present case jointly informs this Court that the State Government has submitted action taken report in several cases prepared by a committee comprising of the Additional Chief Secretary, Prohibition, Excise and Registration Department, Government of Bihar; Secretary, State Taxes, Government of Bihar cum Commissioner, State Taxes, Bihar and Secretary, Transport Department, Bihar headed by the Chief Secretary, Bihar for strict implementation of the provisions of the Bihar Prohibition and Excise Act, 2016 as amended upto date (hereinafter referred to as the “ Excise Act”) in its true spirit and the State is bound to gain confidence of the public.

4. The ill effects of intoxicants are well established, especially in the Indian society. This is why the framers of the Constitution considered it fit to include it in express terms in



Article 47 of the Constitution while mandating the duty of the State to raise standards of living and to improve the public health. Bihar prohibition law has been enacted with the said objective, but for several reasons it finds itself on the wrong side of the history.

5. A Bench of the Apex Court presided by Justice Sanjay Kishan Kaul and Justice M. M. Sundresh directed the State Government to collect number of prosecutions under the Act and cases pending in different Courts including the High Court under the Excise Act. The Hon'ble Apex Court directed that a mechanism should be put in place to deal with the situation which seemed not to have been done by the State referring to the increase in number of cases in lower Court and the High Court after the law was passed putting additional workload on the already overburdened judiciary. While hearing bail petitions of some of the accused who were booked under the Prohibition law after being caught possessing liquor, the Hon'ble Apex Court observed, inter alia as follows:

“We find a number of cases coming to this Court arising from proceedings initiated under the Bihar Prohibition and Excise Amendment Act, 2018. The trial Court and the High Court are both being crowded by bail applications to an extent that at some stage 16 judges of the High Court are listening to bail matters and prosecutions under the Act concerned forms a large part of it. Denial of bail would also result in crowding of the



prisons. We would like to inquire as to what steps the State of Bihar is taking, having brought the law into force and what analysis took place before the law was brought into force in terms of the Court infrastructure required and the manpower required to deal with the litigation which would arise from such a statute. We would also like to know whether the plea bargaining provisions can be taken recourse to deal with the scenario as it is emerging. The Bench also asked the State to focus more on preventive steps to stop sale and consumption of liquor in the State. It said that in most of the cases it is the State officers who facilitate the illegal activities which happen under their nose but is the poor people who are caught and put behind bars.

6. A Bench presided by the Hon'ble Chief Justice of India Mr. N. V. Ramana rejected the contention of the Bihar Government that guidelines be framed to ensure reasoned bail orders are passed taking into account the quantity of liquor seized from an accused.

7. This Court while hearing several bail applications had also directed the State to furnish reports with respect to number of cases lodged and arrests made arising out of offence committed in contravention to the Excise Act. The figure supplied in one of the report was that the police records shows that 3,48,170 cases were lodged and 4,01,855 arrests were made under the Bihar Prohibition and Excise Act until October last year. The Officers of the Bihar Government admit that due to arrest of liquor drinker in large number, the jails of the State are



becoming over crowded.

8. In the backdrop of existing scenario of the State of Bihar, this Court found while going through the reports submitted in several bail applications, the main factors for the non-implementation of the Act in its true spirit leading to adverse consequences are for following reasons:

(A) Smuggling of liquor from outside the State and neighbouring country like Nepal and its mechanism.

Smuggling is an economic offence. Economic advantage is the main motive behind this offence which has led to organized smuggling in the State of Bihar. It involves poor people, juvenile, maintaining political connection and and the association of the smugglers with police men in a hierarchical manner. The Police and other State officials purposely don't provide evidence with regard to various smugglers and syndicate operators. They also do not get arrested because of the loopholes of the law and the manner in which investigation of the excise offence is carried on. The prohibition has, in fact, given rise to unauthorized trade of liquor and other contraband items. Liquor is freely available. The draconian provision have become handy for the police, who are in tandem with the smugglers. Innovative ideas to hoodwink law enforcing agency



have evolved to carry and deliver the contraband.

This Court while hearing a bail application being **Cr. Misc. No. 41005 of 2021 (Roushan Singh Vs. the State of Bihar)**, the counsel for the petitioner had informed this Court that the container on which huge quantity of liquor was loaded was seized while liquor was being unloaded on different vehicles and cars to be transported from the place of occurrence for delivering it to different prospective consumers by the mafias who were running syndicate at the State level. In compliance of the order of this Court, the learned counsel had submitted e-way bill generated with respect to the container bearing Registration No. NL01AB3168 registered in the State of Nagaland nine years and five months back. The information revealed that even after seizure of the aforesaid vehicle on 25.03.2021 (dates are relevant), several e-way bills with respect to the certain GST goods were generated. As per the report submitted by the Commercial Tax department, the following e-way bills were generated for the aforesaid container:

Sl No.	Date	Bill No.	Consignor	Consignee	Transporter GSTIN	Goods Type
01	17.11.2021	491212901414	RPG LIFE SCIENCES LTD, RPG LIFE B-15 FOR MEERUT ROAD SCIENCES INDUSTRIAL AREA, GURGAON	RPG LIFE LTD RANCHI	27AAGCB 3904P2ZC	MEDICALS EXCLUDING GOODS OF
02	17.11.2021	491212901414	RPG LIFE SCIENCES LTD, RPG LIFE B-15 FOR MEERUT ROAD SCIENCES INDUSTRIAL AREA, RANCHI	RPG LIFE LTD RANCHI	27AAGCB 3904P2ZC	MEDICALS EXCLUDING GOODS OF
293	06.03.2020	231188459591	GODREJ AND BOYCEM FG.CO.LTD.SATARA	GODREJ AND BOYCEM SABALPUR PATNA	27AAACG139 5DIZU	REFRIGERATORS AND OTHERS



282	22.12.2020	891131501320	MAA TARINI TRADERS KEONJHAR	HARDOLI PAPER MILLS QIZR LTD. HARDOLI	21CSQPS7626	RECOVERED WASTE AND SCRAP PAPER OR
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The above table is based on the report submitted by the Commercial Taxes Department, it would appear at Serial No.1, E-way Bill No. 491212901414 was generated on 17.11.2021, the name of the consignor is RPG LIFE SCIENCES LTD, B-15 FOR MEERUT ROAD INDUSTRIAL AREA, GURGAON located at Gurgaon and the GST goods were to be transported to the consignee located at Ranchi. Similarly E-way Bill No.491212901414 at Sl No.2 generated on 17.11.2021 with respect to the consignor and consignee who are located in the State of Haryana and Jharkhand. It would be relevant to mention here that on 06.03.2020 at Sl No. 293 relates to E-way bill No. 231188459591 relating to certain GST goods booked by the consignor Godrej AND BOYCOM FG.CO.LTD., Satara which was to be delivered to its ware house at Sabalpur, Patna and after 06.03.2020, a subsequent E-way Bill was generated thereafter.

From above fact, it would appear that surprisingly e-way bills were admittedly generated subsequent to the seizure of the vehicle and as such fraud can only be played in cooperation with the State Tax officials, Excise officials or Police officials.

Before introducing the present system of GST, Article



366 has been amended by inserting Clause (12A), which *inter alia*, as follows:

“goods and services tax” means any tax on supply of goods, or services or both, except taxes on the supply of the alcoholic liquor for human consumption.”

As per the constitutional provision, alcohol for human consumption is excluded from GST. In spite of prohibition in the State of Bihar, the illicit liquor is being brought in a clandestine manner from outside the State, may be in the garb of certain GST goods or in the transport vehicles which are registered outside the State, in particular, are being allowed to enter into the State of Bihar without being intercepted or being checked by the officials responsible for the same under the provision of GST in absence of any prescribed Rules. The Power of physical verification to check the transport vehicles is inherent to the prescribed authority as per the provision of GST Act and Rules.

The above amendment was made to meet the the very object of GST as One Nation-One Tax-One Market and keeping into consideration, hassle free movement of the vehicles carrying goods, the information regarding each transaction and details can be obtained free hand and such acknowledgment has



to accompany with each truck has to be uploaded to a common portal through the internet and once uploaded to a common portal would automatically generate a document is issued, it can be tracked and verified easily by any stakeholders. This enables the tax officials, who are empowered to inspect the E-Way Bill and E-Way Bill number in physical form for all interstate and intrastate movement of goods at any time during the journey to check evasion of tax. Physical verification of conveyance may also be done.

(B) Use of stolen vehicles using fake registration number, engine number and chassis number:

This Court while hearing bail application being Cr. Misc. No. 38730 of 2021 (Arjun Kumar Vs. The State of Bihar) had found huge quantity of liquor loaded on the vehicle bearing Registration No. BR09H2852. A report was submitted by the District Transport Officer, Chhapra who on inquiry found that the said vehicle bears engine No. 497SP28DZY617254. It has been informed by the District Transport Officer, Saran that as per the number plate, the Registration Number of the vehicle is BR09H2852 and is registered in the name of Chandeshwar Singh, while on the basis of Engine No. 497SP28DZY617254, the vehicle is registered in the name of Swamy Shyam Nandan Mishra. The fact which has emerged is that for a single vehicle



there are two owners which led this Court to seek proper action taken report from the Commissioner, Commercial Taxes, the Commissioner, Prohibition and Excise as well as the State Transport Commissioner, who are required to give specific information regarding the real owner of the vehicle on the basis of the report submitted by the two District Transport Officers. The vehicle was driven by the petitioner and he has pleaded his innocence that he had no knowledge about the illicit liquor loaded on the said vehicle. It has been noticed by this Court in several other bail applications that criminals use vehicles bearing fake number plates to commit serious crime like murder, loot, chain snatching and liquor trafficking. Out of those involved in chain snatching and liquor trafficking often get away on bail and they can be kept for no longer period behind bars. It has been often found that fake number plates are mostly used by bootleggers in the State of Bihar which require a separate case for using fake number plates is required to be lodged under Section 467 IPC against them.

This Court had directed the State and its officials to obtain details of the vehicles seized and if required of all the transport vehicles which has entered the State of Bihar and those which are plying inside the State of Bihar to stop further



engagement of such vehicles, but till date no measures or procedure has been prescribed in this regard and informed to this Court.

The provisions of Motor Vehicles Act is very clear that prior intimation of temporary discontinuation of use of vehicles is required in case the vehicle which has become incapable of being used caused by mechanical breakdown or litigation or compelling personal reason which has caused for not plying of the such vehicle.

The transport authorities are duty bound to take action against all those vehicles in which there is no prior intimation of temporary discontinuation made on behalf of the registered owner.

The Bihar Motor Vehicles Taxation Act provides for imposing penalty on such vehicles where there is reason to believe that tax, token, tax receipt or permit have been forged, tampered or fraudulently obtained. It seems the authorities have completely said go by to the provisions of Motor Vehicles Act, 1988 as well as the Bihar Motor Vehicle Taxation Act which is one of the main cause for facilitating the illegal trade of liquor inside the State of Bihar in spite of prohibition.

(C) Engaging minors to transport liquor



It has been reported to this Court that the liquor smugglers are engaging the minors as driver, cleaner, etc. of the transport vehicles. In the above Cr. Misc. No. being 38730 of 2021, the petitioner had declared his age to be 30 years for obtaining bail, but at the fag end of the trial, the petitioner made a prayer to declare him as a juvenile. The Court was informed that the petitioner of the above case namely, Arjun Kumar was declared juvenile by the Juvenile Justice Board, Saran at Chhapra. Taking into consideration the matter to have become infructuous, the bail was dismissed as having become infructuous vide order dated 24.06.2022. It appears that deliberately false declaration was made on behalf of the petitioner before this Court on affidavit and the same requires initiation of criminal prosecution against the petitioner and his pairvikar. Hiring minor has become a new way of smuggling liquor in dry State. Using minor, they know that once they are arrested will face trial in juvenile court and will be released within months as what has happened in Cr. Misc. No. 38730 of 2021 (Arjun Kumar Vs. The State of Bihar).

(D) Environmental Concern

Destroying illicit liquor is, in fact, leading to ecological imbalance within the vicinity where the same is



destroyed. The chemical composition of liquor has its adverse effect on the micro organism leading to infertility of the soil. The percolation of the liquor pollutes water table and ultimately affects the quality of potable water. The issue was raised in above Cr. Misc. No. 38730 of 2021 and now, of late, the State government has shown its concern keeping in view the hazardous effect of crushing of liquor bottles made of glasses and plastic by adopting a policy to manufacture bangles out of the same. The State is also well advised to formulate a environment friendly policy for adopting scientific measures in like manner with respect to the liquor contained in the bottles.

(E) Lacuna left by the Investigating Officer in conduct of search, seizure and investigation:

This Court while hearing several bail applications found that the Investigating Agency while investigating into the offences committed under the Excise Act, deliberately don't submit chargesheet against the smugglers or the gang operators rather submits charge sheet against poor driver, cleaner, labourers who are engaged in loading and unloading of liquors and sometimes the passerby who don't even have connection with the offence which has led legal ban gone oppose to the policy. Not only the police official, excise official, but also officers of the State Tax department and the transport



department love liquor ban, for them it means big money. The number of cases registered is few against the king pin / syndicate operators in comparison to the magnitude of the cases registered against the poor who consume liquor and those poor people who are engaged by them. The life of majority of the poor section of the State who are facing wrath of the Act are daily wagers who are only earning member of their family. The Investigating Officer deliberately does not substantiate the allegations made in the prosecution case by any legal document and such lacunae are left and the same allows the Mafia scot free in want of evidence by not conducting search, seizure and investigation in accordance with law. The consequences has led to starving of the family members.

(F) The failure of the State to take strict disciplinary action against the erring officers:

The failure of the State to take strict disciplinary action against the officers without whose engagement commission of such offence is not possible are left free. The State must take appropriate legal and disciplinary action against such officials, particularly, Police Officers, Excise Officers, Commercial Tax Officers and the District Transport Officers of the concerned District under whose nose illicit trade of liquor is being carried out. The State is duty bound to stop corruption



which has led to growth of a parallel economy.

(G) Loss in terms of Human Potential

The prohibition has pushed the consumption of cheaper hooch and drugs not only leading to thriving of parallel economy of illicit liquor, but also the problem relating to alcoholism. It has been found that the labourers earning paltry daily wages were slapped with large fine they could not afford and had to take loans that push them further into the death. It is recorded that majority of the citizens between the age group of 18 to 35 years are addicted to liquor. This age group is the most productive age group and it has led in terms of human potential loss due to ill effect of liquor on their physical, psychological, moral and their intellectual growth. Perhaps, the State has not taken any preventive measures to combat menace of such abuse.

(H) Sharp rise in consumption of drug and persons addicted to it:

After liquor ban was imposed, many started looking for substitute. Drugs being on supply route made an easy entry into the State amid the lack of vigilance. The addiction to cheaper medicinal drug is a more spurious choice according to the expert. The data shows that before 2015, there were hardly any case related to drugs, but post 2015, the same has alarmingly surged. What is more worrying trend is that most



addicts are as young as 10 years and below 25 years of age. The statistics shows that the addiction for ganja charas/bhang has shooted up post prohibition. The state has failed to stop trafficking of drugs through out the Bihar.

(I) Hooch Tragedy

The consumers of illicit liquor laced with methyl alcohol have lost their life in lacks in the State. Scientific report shows that 5 mililitres of Methyl alcohol is enough to make one go blind and more than 10 mililitres is quite often fatal. Some of the other side effects of Methanol includes Acidosis, a condition in which body tends to produce lot of acid and kidney fail to remove or flush them out of the body. The State government has failed to develop standard operating protocol to treat patients affected. No treatment mechanism to treat such patients affected due to spurious liquor by establishing a separate health center / rehabilitation center engaging expert / trend health care workers attending such patients. Post liquor ban, the State has witnessed large number of hooch tragedy occurring every day. This is the most worrying part which this Court has noticed. The life of the people has been put at great risk not only by spurious liquor but also by the rampant use of illicit drugs.

9. Mr. Vikash Kumar informs this Court that in CWJC



No. 7330 of 2022 (Molson Coors Cobra India Pvt. Ltd. vs the State of Bihar and Ors.) a Division Bench of this Court vide order dated 19.09.2022 has directed the Commissioner, Excise to file personal affidavit placing on record the empirical data in relation to the provisions for the last three years and the said order has been modified to the extent that three months be read in place of three years. A query was raised by this Court as what would be the factors of empirical data so required to be furnished, to this Mr. Vikash Kumar informs that the empirical data constitute (I) age of the accused (ii) gender of the accused (iii) social profile of the accused arrested (iv) details with respect to initiation of the confiscation proceeding relating to the vehicle/premises (shop, house, etc.,) involved. This Court finds that the petitioner of the above writ petition has made specific prayer which is not of much importance. Mr. Vikash Kumar, however, makes it clear that as the issues have also already been taken into consideration by this Court in Cr. Misc. No. 38730 of 2021 (Arjun Kumar vs the State of Bihar) in which this Court has passed a comprehensive order dated 29.03.2022 and subsequently in the present case order dated 15.06.2022, the matter is being seriously taken up by the State Government and the Committee headed by the Chief Secretary



constituting the three departments. He further informs that he will file all the reports submitted by the State before the appropriate Bench in larger public interest.

10. This Court finds that the lives of citizens of the State is risked by the failure of the State machinery effectively carrying on the provision of the Bihar Prohibition and Excise Act, 2016 as amended from time to time and to safeguard the health, life and liberty of the people at large in public interest refers the matter before Hon'ble the Chief Justice to take cognizance of the issue on its judicial side for instituting public interest litigation for the cause of larger public interest.

11. This Court appreciates the endeavour and the effort taken by Mr. Vikash Kumar, learned SC-11 and Mr. Ajit Kumar and Mrs. Asha Devi, learned Additional Public Prosecutor appearing on behalf of the State who have shown their fairness in ventilating the issue before the State Government and its officials for implementation of the Act in its true spirit by holding several meetings in chamber along with the Chief Secretary; I.G./Additional Chief Secretary, Prohibition, Excise and Registration Department and his subordinate officers, D.G.P., Secretary, State Tax Department, Government of Bihar cum Commissioner, State Taxes Bihar;



Secretary, Transport Department, Government of Bihar and the District Transport Officers. They have rendered invaluable assistance by submitting reports which have been furnished before this Court from time to time giving valuable input by taking up the issue which is not only of larger public interest but also of much concern of the State government for implementing the Act in its true spirit and the Court acknowledge the same.

12. Learned counsel appearing on behalf of the petitioner submitted that considering the fact that the matter now involves larger public interest and it requires adjudication, the provisional bail granted to the petitioner vide order dated 15.06.2022 may be confirmed in the interest of justice.

Accordingly, this bail application stands disposed of only with respect to the bail granted to the petitioner and for the purpose of larger public interest, same survives.

13. Registry is directed to place the records of this case along with the records of Cr. Misc. No. 38730 of 2021 (Arjun Kumar vs the State of Bihar), Cr. Misc. No. 41005 of 2021 (Roushan Singh Vs. The State of Bihar) and Cr. Misc. No. 39706 of 2021 (Rajesh Kumar @ Rajesh Singh and the State of Bihar) and several reports submitted on behalf of the State before Hon'ble The Chief Justice for taking cognizance of the



issue in larger public interest.

14. Registrar (List) is directed to list all the bail applications related to excise matters pending before this Court in which the petitioners have been released on provisional bail before this Court.

(Purnendu Singh, J)

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