



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No 626 of 2022
(Arising out of SLP (Crl) No 3005 of 2022)

Sweta Kumari

Appellant

Versus

State of Bihar

Respondent

ORDER

- 1 Leave granted.
- 2 The appellant has been denied anticipatory bail by the impugned order of the Single Judge of the High Court of Judicature at Patna dated 6 January 2022. The appellant sought anticipatory bail, apprehending arrest in PS Case No 251 of 2020 registered for offences punishable under Section 30(a) of the Bihar Prohibition and Excise Act 2016 against the appellant and four other co-accused.
- 3 Nine bottles of liquor were recovered from a scooty belonging to the appellant. The scooty is alleged to have been ridden by one of the co-



accused. A charge-sheet has been submitted.

- 4 On 7 April 2022, this Court while issuing notice to the respondent-State, granted an interim stay of the arrest of the appellant in connection with FIR No 251 of 2020 registered at PS Rupaspur District Patna, Bihar. In pursuance of the notice, Mr Rishi K Awasthi, counsel has appeared on behalf of the State.

- 5 The appellant is a 21-year old girl who was denied anticipatory bail by the High Court. Though there is an embargo in Section 76(2) of the statute, we see no reason why the High Court ought not to have exercised its power as a Constitutional court to grant anticipatory bail to protect the personal liberty of the accused, in a case such as the present where a 21 year old girl is sought to be prosecuted following the recovery of liquor bottles from a scooty which, though belonging to her, was not being driven by her at the relevant point of time. The refusal of the High Court to grant anticipatory bail in such cases leads to a proliferation of litigation before this Court. We are clearly of the view that the High Court must not abdicate its constitutional powers and must ensure that the personal liberty of the accused in appropriate cases has to be safeguarded. Many accused will not have the resources or the awareness to pursue their remedies before this court. Unless the High Court exercises its constitutional duty to protect personal liberty, they will continue to languish in jail.



- 6 We may also note at this stage a decision of the Full Bench of the Patna High Court in ***Ram Vinay Yadav vs The State of Bihar***¹, where it has been held:

“It is not in dispute that Section 76(2) of the Act 2016 clearly bars the application of Section 438 of the Criminal Procedure Code in the offences arising out of Act 2016 but from perusal of sub-section (2) of Section 76 of Act 2016, it would appear that above stated bar is applicable only if an offence under the Act 2016 is made out because in sub-section (2) of Section 76 of the Act 2016 the sentence “on an accusation of having committed an offence under this Act” has been used and, therefore, it is explicit clear that if a person commits an offence punishable under the Act 2016, in that event petition filed under Section 438 of the Cr.P.C. cannot be entertained but if a person does not commit any offence punishable under the Act 2016, then in that event, the said person has right to file a petition under Section 438 of the Cr.P.C. and the bar imposed under sub-section (2) of Section 76 of the Act 2016 shall not come in his way. Therefore, even if a person has been made accused in a case registered under the provisions of Act 2016 but from bare perusal of the accusation levelled against him does not disclose any offence of the Act 2016, the said person has right to file petition under Section 438 of the Cr.P.C. in spite of bar imposed under Section 76(2) of the Act 2016 because if the offence under the provisions of Act 2016 is not made out from the very face of the accusation, the bar imposed under Section 76(2) of the Act 2016 shall not come in picture.”

- 7 Having regard to the facts and circumstances noted above, we confirm the ad-interim order by directing that in the event of the arrest of the appellant, she shall be released on bail forthwith subject to such terms and conditions as may be imposed by the trial court.

¹ 2019 (2) PLJR 1089



8 The appeal is accordingly disposed of.

9 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Surya Kant]

New Delhi;
April 13, 2022
CKB



ITEM NO.23

COURT NO.4

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No.3005/2022

(Arising out of impugned final judgment and order dated 06-01-2022 in CRM No.9072/2021 passed by the High Court of Judicature at Patna)

SWETA KUMARI

Petitioner(s)

VERSUS

THE STATE OF BIHAR

Respondent(s)

(With I.R. and IA No.47064/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.47065/2022-EXEMPTION FROM FILING O.T.)

Date : 13-04-2022 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s)

Mr. Gaurav Agrawal, AOR

For Respondent(s)

Mr. Rishi K Awasthi, Adv.
Mr. Prashant Kumar, Adv.
Mr. Santosh Kumar - I, AOR

UPON hearing the counsel the Court made the following
O R D E R

1 Leave granted.



- 2 In terms of the signed order, the appeal is disposed of confirming the ad-interim order by directing that in the event of the arrest of the appellant, she shall be released on bail forthwith subject to such terms and conditions as may be imposed by the trial court.
- 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Court Master

(Signed order is placed on the file)