

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6078 of 2019

Arising Out of PS. Case No.-786 Year-2018 Thana- FORBESGANJ District- Araria

Md. Waseem @ Md. Wasem Alam son of Md. Nayyar Alam Resident of
Village - Doriya Sonapur, P.S.- Simraha, District-Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mukesh Kumar Rana

For the Opposite Party/s : Mr.Md. Mushtaque Alam

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL ORDER

4 06-02-2019 Heard learned counsel for the parties.

This application for anticipatory bail arises out of Forbesganj (Simraha) Police Station Case No. 786 of 2018, (Special Case No. 1273 of 2018), disclosing offences under Sections 30(a) and 38(i) of the Bihar Prohibition and Excise Act, 2016.

According to the case of the prosecution, based on a secret information, the Police had conducted a raid at a place from where certain persons on seeing the police had fled away. One person was arrested, who disclosed the name of others including this petitioner. On the basis of search, 226 bottles each containing 180 ml. Eskuf Codein Cough Syrup kept in two bags were seized.

This is to be noted that Section 3 of the Bihar



Prohibition and Excise Act, 2016, empowers the State Government to declare, for the purposes of this Act such items or commodities or chemical ingredients, which can be used as a substitute for alcohol, to be intoxicants with such restrictions or conditions as may be specified in the notification, by notification.

Codein has been notified by the State Government as an intoxicant by notification no. 11/Adhi.Karya.-01-06/2016/4027, dated 18.10.2016. In view of the said notification, an offence punishable under Sections 30(a) and 38(i) of the Bihar Prohibition and Excise Act, 2016 is made out.

Learned counsel for the petitioner has submitted that recovery has been made from possession of the co-accused Sahatlal Sah and the petitioner's name has surfaced only on the basis of confessional statement of the said co-accused.

Section 76(2) of the Bihar Prohibition and Excise Act, 2016, bars application of Section 438 of the Criminal Procedure Code. In that view of the matter, this application cannot be maintained and is accordingly dismissed.

However, the petitioner is directed to surrender before the Court below within four weeks from today and seek regular bail, if so advised. If he does so, his application for regular bail



shall be considered and decided on its own merit on the same day, without being prejudiced by rejection of the present application for grant of anticipatory bail by this Court.

(Chakradhari Sharan Singh, J)

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