

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26824 of 2019

Arising Out of PS. Case No.-302 Year-2018 Thana- GOVERNMENT OFFICIAL COMP.
District- Samastipur

Shankar Singh, aged about 46 years, Male, Son of Sri Laxmi Narayan Singh
Resident of Village- Bharpur, P.S.- Bihpur, District- Bhagalpur.

... .. Petitioner

Versus

The State Of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Abhay Shankar Singh, Advocate
For the Opposite Party : APP

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL ORDER

2 24-04-2019 Heard learned counsel for the petitioner and learned APP
for the State.

2. The petitioner apprehends his arrest for the offences alleged under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 registered in connection with Excise Case No. 302 of 2018.

3. It is submitted that the petitioner has been falsely implicated on the accusation of recovery of 17.64 litres of foreign liquor from Mahindra Bolero vehicle bearing registration No. BR 21B 5001. It is pointed out from the prosecution report itself that recovery has been made from two persons, namely, Devendra Kumar and Upendra Mahto who were present in the vehicle at the time they were apprehended by the Excise Officials. From the documents found in the vehicle, it was found that co-accused Raghu Mahto @ Jay Prakash Mahto was the owner of the said vehicle and the petitioner has been made accused because he is ex-owner of the said vehicle having sold it to the said Raghu Mahto @ Jay Prakash Mahto on 07.01.2017 itself. It is therefore submitted that having sold the vehicle more than two years ago, he has no concern with the same nor the recovery of the offending goods, as such no offence under the provisions of the Bihar Prohibition and Excise Act, 2016 is made out



against the petitioner .

4. Ordinarily, an anticipatory bail petition in relation to the offence under the Bihar Prohibition and Excise Act, 2016 is not maintainable. However, where, on the basis of the statements in the first information report, the ingredients of the offence alleged against a person are not made out, as observed by a Division of this Court in Cr. Misc. No. 21578 of 2017 (Manish Kumar @ Lokesh Kumar Vs. The State of Bihar) and analogous cases, there would be no bar to the grant of anticipatory bail.

5. Learned APP has not pointed out any material in the FIR alleging any offence said to have been committed by the petitioner in order to attract the provisions of the said Excise Act.

6. Be that as it may, in the event of the petitioner's arrest or surrender before the court below within six weeks from the date of communication of this order, let the above named petitioner be released on bail on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of like amount each to the satisfaction of learned 3rd Additional Sessions Judge-cum-Special Judge, Excise, Samastipur in connection with Excise Case No. 302 of 2018, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C. and with further conditions --

(i) That one of the bailors shall be a close relative of the petitioner.

(ii) That the petitioner shall not indulge in any similar offence till conclusion of the trial.

(iii) That the petitioner shall remain physically present in court on each and every date during trial and in the event of failure on two consecutive dates without sufficient reason, his bail bond shall be liable to be cancelled by the learned Court concerned.

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(Vikash Jain, J)

