

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31279 of 2019

Arising Out of PS. Case No.-12 Year-2019 Thana- GOPALPUR District- Patna

SADHU @ ABDHESH KUMAR Son of Gauri Shankar Rai Resident of
Sabalpur, P.S.- Nadi, District - Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Raj Bansh Dubey

For the Opposite Party/s : Mr.Bishweshwar Ram

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

3 05-08-2019 Heard learned counsel for the petitioner and learned APP
for the State.

2. The petitioner apprehends his arrest for the offences alleged under Sections 379 461, 411 of the Indian Penal Code and Sections 37(b) (c) of the Bihar Prohibition & Excise Act, 2016 (for short 'the Prohibition Act') registered in connection with Special Case No. 633 of 2019, arising out of Gopalpur P.S. Case No. 12/2019.

3. It is submitted that the petitioner has been falsely implicated and in any event the accusation under the Prohibition Act is not applicable to the petitioner, rather the same is in respect of two co-accused persons, both named Mukesh Kumar, who were arrested at the spot who were in drunken condition. It is therefore, submitted that no offence under the Prohibition Act is made out against the petitioners. The petitioner's name has surfaced merely on the confessional statement of arrested co-accused persons. No recovery of any incriminating articles has been made from the conscious possession of the petitioner or from his house.

4. Ordinarily, an anticipatory bail petition in relation to the offence under the Prohibition Act 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 Bench 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 Excise Act, 2016.

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 Special Judge, Excise Act, Patna in connection with Special Case No. 633 of 2019, arising out of Gopalpur P.S. Case No. 12/2019, subject to the conditions as laid down under Section 438 (2) Cr.P.C. and also subject to the following 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 co-operate with the investigation, if not already concluded, and make himself available as and when so required and in case of failure, the State shall be at liberty to move for cancellation of bail.

iv. 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.

(Vikash Jain, J)

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