

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34870 of 2019

Arising Out of PS. Case No.-51 Year-2019 Thana- JOKIHAT District- Araria

Sanjay Mahto @ Sanjay Kumar Mahto, Son of Sadanand Mahto Resident of
Village-Dagarua Noniya Tola Ward No.3, P.S.-Dagurwa, District-Purnea.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ram Prawesh Kumar, Advocate

For the Opposite Party/s : Mr.Chandra Sen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 03-06-2019 Heard learned counsel for the parties.

The petitioner apprehends his arrest in connection with Joki hat (Malgaon) P.S.Case No. 51 of 2019 corresponding to Spl. Case No. 149 of 2019 registered under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

Allegation against the petitioner, as mentioned in the FIR, is that on 27.01.2019, police party saw two persons standing near a motorcycle and upon arrival of the police, they started fleeing from the spot and upon chase, the police arrested two persons, namely, Balram Kumar Mahto and Manjit Kumar and in presence of two independent witnesses, the police recovered 07 bottles of Royal Stag Blended Whisky, each containing 750 ml, from a white colour bag hanged with the leg guard of the motorcycle, 48 pouches of Officer's Choice Whisky, each



containing 180 ml, from the dicky of the motorcycle and 20 pieces of Officer's Choice Tetra Whisky, each containing 180 ml, and, accordingly, seizure list was prepared. The prosecution further states that arrested persons were asked to about third person, who was also standing near another motorcycle, succeeded in fleeing away with motorcycle from the spot and arrested persons disclosed the name of the third person, as Sanjay Mahto @ Sanjay Kumar, who is the petitioner in the present bail application.

Learned counsel for the petitioner submits that neither recovery has been made from the possession of the petitioner nor the motorcycle, which was seized, belongs to the petitioner. His name occurred on the basis of statement of co-accused before the police and accordingly, his submission is that no offence under Section 30(a) of the Excise Act is made out against the petitioner.

Learned counsel for the State submits that in view of the Full Bench judgment passed in Cr. Appeal (SJ) No. 431 of 2019, if, *prima facie*, no offence is made out based upon the allegation levelled in the FIR, anticipatory bail application may be maintainable.

After having heard learned counsel for the parties and



upon perusal of the FIR, I am satisfied that the allegation levelled against the petitioner does not disclose *prima facie* any offence under Section 30(a) of the Excise Act and the petitioner deserves the advantage of anticipatory bail inasmuch as no recovery of liquor or intoxicant has been made by the police from the possession of the petitioner and his name occurred merely on the basis of statement of co-accused. Accordingly, let the petitioner, abovenamed, in the event of arrest or surrender before the court below within a period of six weeks from the date of receipt of a copy of this order, be released on bail upon furnishing bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of the learned Additional District and Sessions Judge-2nd-cum-Special Judge, Excise, Araria in connection with Jokihat (Malgaon) P.S. Case No. 51 of 2019 corresponding to Spl. Case No. 149 of 2019; subject to condition as laid down under Section 438(2) of the Code of Criminal Procedure and petitioner shall make himself available for interrogation by the police as and when required.

(Anil Kumar Sinha, J)

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