IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39945 of 2019

Arising Out of PS. Case No.-252 Year-2018 Thana- SULTANGANJ District- Bhagalpur

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GUDDU KUMAR @ GUDDU MANDAL @ SADANAND MANDAL Son of Genalal Mandal Resident of Village- Dudhaila, P.S.- Sultanganj, District- Bhagalpur.

... ... Petitioner/s

Versus

THE STATE OF BIHAR

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Manoj Kumar Jha
For the Opposite Party/s : Mr.Arvind Kumar Pandey(APP 84)

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

3 22-08-2019 Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner apprehends his arrest for the offences alleged under Sections 30(a) of the Bihar Prohibition & Excise Act, 2016 (for short 'the Prohibition Act') registered in connection with Sultanganj P.S. Case No. 252 of 2018.

3. It is submitted that the petitioner has been falsely implicated and he is not named in the FIR. His name has surfaced in course of investigation when the police went to the house of Krishna Sah in whose name the subject vehicle from which recovery of the incriminating goods have been made, was registered. The family members of Krishna Sah produced a sale agreement dated 11.06.2018 saying that the vehicle had been sold to the petitioner on that date. It is however submitted that as a matter of fact Krishna Sah had sold the vehicle during his lifetime to Ranjan Kumar in terms of the sale agreement dated 21.12.2016 (Annexure-3). In the sale agreement by which the vehicle had purportedly been sold to the petitioner contains an interpolation in the date by striking off the date originally printed as 21.12.2016 with handwriting as 11.06.2018. It is specifically stated that Krishna Sah had already died prior to 11.06.2018 when the

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vehicle was allegedly sold to the petitioner. Moreover, the petitioner's name has been stated as Guddu Mandal whereas his name is Sadanand Mandal as evident from his Aadhar card and as such it is unlikely that in the sale agreement he put his signature as Guddu Mandal. In the circumstances, it is submitted that the only basis for implicating the petitioner is the statement of the family members of Krishna Sah based on the interpolated sale agreement (Annexure-2), in complete ignorance of the earlier sale agreement dated 21.12.2016 in favour of Ranjan Kumar. As such, the ingredients of the offence under the Prohibition Act are not made out against the petitioner, more so, when no allegation has been made to connect the petitioner with the recovery of the incriminating goods. The petitioner claims clean antecedents.

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 Prohibition 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 2nd Additional Sessions Judge-cum-Special Judge, Excise, Bhagalpur in connection with Sultanganj P.S. Case No. 252 of 2018 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.

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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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