

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51417 of 2019**

Arising Out of PS. Case No.-72 Year-2019 Thana- THawe District-
Gopalganj

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BABURAM CHOUDHARY, aged about 48 years, male, Son of Late Vishwanath Choudhary Resident of Village-Bangra Tola, Nawkiganj, P.S.-Thawe, District-Gopalganj.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner : Mr. Harendra Prasad, Advocate.

For the Opposite Party: APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

2 20-08-2019

Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner apprehends his arrest for the offences alleged under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (for short 'the Prohibition Act') registered in connection with Thawe P.S. Case No. 72 of 2019.

3. It is submitted that the petitioner has been falsely implicated in connection with recovery of a total 7.740 litres of country made liquor. It is submitted that even on perusal of the F.I.R., no accusation has made out against the petitioner in order to attract the offence alleged under the Prohibition Act, as it has merely been stated that on seeing the police party, one person ran away and was identified by the Choukidar as the petitioner. The recovery is said to have been made from a bush behind the petitioner's house, without however connecting the place of recovery or the said goods to the petitioner in any manner whatsoever. It is submitted that even otherwise, mere running



away from the spot without any other accusation connecting the petitioner with the recovery does not constitute an offence under the Prohibition Act. 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 persons 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 F.I.R. alleging any offence to have been committed by the petitioner in order to attract the provisions of the said Prohibition 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 Additional Sessions Judge-II cum-Special Judge, Excise Act, Gopalganj in connection with Thawe P.S. Case No. 72 of 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 cooperate 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) 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.

(Vikash Jain, J)

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