

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54731 of 2019

Arising Out of PS. Case No.-233 Year-2018 Thana- AMARPUR District- Banka

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AMIT KUMAR @ AMIT KUMAR TIWARI Son of Ganesh Kumar Tiwari
Resident of Village- Salempur, P.S. -Amarpur, District- Banka, at present
resident of D-222, Mata Dairy Road, P.S. new Ashok Nagar, Vasundhara
Enclave, East Delhi, Delhi-110093.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Jha
For the Opposite Party/s : Mr.Md. Shakir Ahmad

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL ORDER

2 02-09-2019 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner apprehends his arrest for the offences alleged under Sections 37(b), 30(a) of the Bihar Prohibition & Excise Act, 2016 (for short 'the Prohibition Act') registered in connection with Amarpur P.S. Case No. 233 of 2018.

3. It is submitted that the petitioner has been falsely implicated and the petitioner is not named in the FIR. It is submitted that recovery of one litre mahua country made wine has been made from the motorcycle bearing no. BR51A-1255 and the rider Chhotu Das was arrested. It is submitted that the petitioner was the erstwhile owner of the motorcycle which was sold by him in the year 2017 itself to one Anil Harijan and the latter had filed a petition for release of the motorcycle on 08.08.2018. It is submitted that no accusation whatsoever has been made against the petitioner in the FIR to connect him with the recovery of the offending goods or otherwise to attract ingredients of the offences 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 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, Banka in connection with Amarpur P.S. Case No. 233 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.

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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