

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56660 of 2019

Arising Out of PS. Case No.-248 Year-2019 Thana- GOVERNMENT OFFICIAL COMP.
District- Nalanda

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MANOJ KUMAR Son of Awadhesh Prasad Resident of Village + P.S.- Sare,
District - Nalanda.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Amit Kumar
For the Opposite Party/s : Mr.Nityanand

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 11-09-2019 Heard both sides.

The petitioner apprehends his arrest in Complaint
Case No.248C3(Ex) of 2019 registered under Section 30(a) of
Bihar Prohibition and excise Act.

The Excise officials on secret inputs raided the house
of the petitioner and recovered different brands of Indian made
foreign liquor bearing 16.875 liters.

The learned counsel for the petitioner submits that
raid was conducted on 22.07.2019. On 22.07.2019, the
petitioner surrendered in the court in connection with Sare P.S.
Case No.63 of 2019 and he was granted bail. It is further
submitted that recovery was made from the house of joint
family in which the parents, wife and children of the petitioner



were residing but the Excise officials only named the petitioner. Learned counsel for the petitioner submits that in Cr. Misc. No.56438 of 2019, this Court granted anticipatory bail to the accused, Laxman Sah and the case of the petitioner stands on the same footing. It is further submitted that in the case of Manish Kumar @ Lokesh Kumar v. The State of Bihar, this Court in Cr. Misc. No.21578 of 2017 has held that Section 76(2) of the Act is repugnant to the Central Act i.e. Code of Criminal Procedure and in this view of the fact, the same may be termed as void and there is no restriction to entertain anticipatory bail petition.

From perusal of F.I.R. itself, it appears that informant got secret information that it was petitioner who had kept liquor in his house and on such, a raid was conducted and recovery was made. In the case of Laxman Sah, nothing was recovered from his possession. The provisions of Section 76(2) of the Bihar Prohibition and Excise Act came up for consideration before a Full Bench in the case of Ram Vinay Yadav and it is held that anticipatory bail is only maintainable in the offence under the Excise Act is not made out. The petitioner has also got criminal antecedent and he is accused in Sare P.S. Case No.63 of 2019. From the facts itself, it appears that it was petitioner who



had kept liquor in his house and on search different brands of Indian made foreign liquor kept in many bottles were recovered.

Taking into consideration the facts aforesaid, I am not inclined to enlarge the petitioner on anticipatory bail. Accordingly, the same is rejected.

(Prabhat Kumar Jha, J)

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