

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63494 of 2019**

Arising Out of PS. Case No.-322 Year-2018 Thana- KADWA District-
Katihar

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NAGESHWAR MANDAL Son of Musay Mandal R/O - Jhaua, P.S.- Dagarua,
District- Purnia

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner : Mr. Sanjeev Kumar Singh, Advocate

For the Opposite Party: Mr. Manoj Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

2 22-10-2019

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 Kadwa (Balua Belon) P.S. Case No. 322 of 2018.

3. It is submitted that the petitioner has been falsely implicated in the backdrop of recovery of 12.610 litres of foreign made wine from the two arrested persons on motorcycle. The petitioner has been implicated merely because he happens to be the owner of the subject motorcycle but admittedly he was neither present at the spot nor any recovery of the incriminating articles has been made from his possession, nor any role whatsoever has been assigned to him in the matter of carrying the goods. It is submitted that mere ownership of the motorcycle



does not attract the offence under the Prohibition Act and moreover, the motorcycle was in the immediate physical possession of the two apprehended persons at the time of occurrence. 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 A.D.J. II cum Special Judge, Katihar in connection with Kadwa (Balua Belon) P.S. Case No. 322 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 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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