

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60349 of 2019**

Arising Out of PS. Case No.-151 Year-2019 Thana- BHANGWANPUR HAT
District- Siwan

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OM PRAKASH MAHTO Son of Paras Mahto R/o Village- Ratan Pandaul,
P.S.- Bhagwanpur Hat, District- Siwan.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner : Mr. Bijay Prakash Singh, Advocate.

For the Opposite Party: Mrs. Indu Kumari Srivastava, APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

2 26-09-2019 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner apprehends his arrest for the offences alleged under Sections 30(a), 41(1) of the Bihar Prohibition and Excise Act, 2016 (for short 'the Prohibition Act') registered in connection with Bhagwanpur Hat P.S. Case No. 151 of 2019.

3. It is submitted that the petitioner has been falsely implicated in connection with 20 litres of country made *Mahua* liquor recovered from the bush behind the house of the Dinesher Mahto. It is submitted that such recovery was not made from the conscious possession of the petitioner, nor is there any averment in the F.I.R. to connect the petitioner with the place of recovery or with the goods recovered. It is therefore submitted that the



ingredients of the offence under the Prohibition Act are not attracted and no offence is made out against the petitioner. 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 2nd Additional Sessions Judge cum Special Judge, Excise, Siwan in connection with Bhagwanpur Hat P.S. Case No. 151 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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