

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63803 of 2019

Arising Out of PS. Case No.-73 Year-2019 Thana- DEHRI TOWN District- Rohtas

MAHIPAL Son of Gulab Sharma Resident of Mohalla- Ram Nagar, Raipur
Road, Ward No. 13, Tahsil- Hisar, P.S.- Hisar City, District- Hisar, Haryana.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Raghunandan Kumar Singh

For the Opposite Party/s : Mr.Lakshmi Kant Sharma

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

2 24-10-2019 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner apprehend his arrest for the offences
alleged under Section 30(a) of the Bihar Prohibition and Excise
Act, 2016 (hereinafter to be referred to as ‘the Prohibition Act’),
registered in connection with Dehri Nagar P.S.Case No. 73 of
2019.

3. It is submitted that the petitioner has been falsely
implicated in connection with recovery of 4320 litres of foreign
liquor from the truck bearing Registration No.HR39B-3729. It is
submitted that the petitioner being the owner of the said truck
had sold the same on 26.01.2019 prior to the FIR to one Mukesh
Kumar for total consideration amount of Rs.8,11,600/-, out of
which Rs. 85,000/- was received by the petitioner and the



remaining amount of Rs. 8,11,600/- was to be paid to M/s HDFC Bank towards repayment of loan in monthly instalments. It is stated that possession of the vehicle has been handed over to the said Mukesh Kumar. The petitioner had executed a power of attorney in favour of said Mukesh Kumar on 28.01.2019 in Haryana (Annexure-2). It is, therefore, submitted that the petitioner was not in possession of the said vehicle on the date of occurrence and the ingredients of the offences under the Prohibition act are not made as concerns 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 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 to have been committed by the petitioner in order to attract the provisions of the Prohibition Act.



6. Be that as it may, in the event of petitioner's arrest or surrender before court below within six weeks hereof, let the above named petitioner be released on provisional bail on furnishing bail bond of Rs. 10,000/-(ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-II-cum-Special Judge, Excise Act, Rohtas at Sasaram in connection with Dehri Nagar P.S. Case No. 73 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 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) 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.

7. The provisional bail granted to the petitioner shall be confirmed by the learned court below upon its verification and satisfaction, if the petitioner produces the registered power of attorney dated 28.01.2019 in original (Annexure-2) in the court below within a further period of six weeks after furnishing bail bond and that the petitioner had handed over the possession of the said vehicle to said Mukesh Kumar prior to the alleged occurrence and had not taken back possession of the same by reason of default in repayment of loan in instalments, conversely, his bail bond shall stand automatically cancelled.

(Vikash Jain, J)

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