

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65909 of 2019**

Arising Out of PS. Case No.-21 Year-2019 Thana- RAUTARA District-
Katihar

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BHAWESH RISI @ BHAWESH KUMAR RISHI S/o Kailash Risi Resident of
Village- Dharmaili, P.S.- Rautara, District- Katihar.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner : Mr. Bhola Prasad, Advocate.

For the Opposite Party: Mr. Lalan Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL ORDER

2 04-11-2019 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner apprehends his arrest for the offences alleged under Sections 147, 149, 332, 333, 307, 353, 427 of the Indian Penal Code, Section 3 of the Prevention of Damage to Public Property and Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (for short 'the Prohibition Act') registered in connection with Rautara P.S. Case No. 21 of 2019.

3. It is submitted that the petitioner has been falsely implicated in connection with recovery of 5 litres of *Mahua* liquor from the house of co-accused Kailash Rishi, as it has been merely stated in the F.I.R. that the petitioner, who is the son of the aforesaid Kailash Rishi, fled away from the house on seeing the police party. It is submitted, however, that mere fleeing away on



seeing the police party is not an offence under the Prohibition Act. No accusation has been made connecting the petitioner with the recovery of incriminating goods.

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. The petitioner claims clean antecedents.

6. As regards the alleged offences under the Indian Penal Code, the F.I.R. is against as many as 4 named and 4-5 unknown persons. No specific overt act has been attributed to the petitioner. There is no injury report on record to corroborate the accusation of assault.

7. 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 Additional Sessions Judge-II-cum Special Judge, Excise, Katihar in connection with Rautara P.S. Case No. 21 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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