

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71316 of 2019

Arising Out of PS. Case No.-72 Year-2019 Thana- GAIGHAT District- Muzaffarpur

ABDUL RAHMAN @ ABDUL RHAMAN Son of Rasul Khan Resident of
Mohalla-Jahazpur, P.S. and District-Bhilwara, State-Rajasthan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anish Kumar

For the Opposite Party/s : Mr.Upendra Kumar

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 19-12-2019 Heard the learned counsel for the petitioner and the learned
A.P.P. for the State.

This is an application for grant of anticipatory bail in connection with Gaighat P.S. Case No. 72 of 2019 registered for the offence punishable under Sections 30(a) of the Bihar Prohibition and Excise Act, 2016.

The allegation as per the informant, who is the Sub-Inspector of Police cum Station House Officer, Gaighat is that on secret information, he along with the other police personnel had chased the truck bearing registration no. RJ 29GA/2771 whereupon the driver of the said truck had jumped from the truck and fled away. It is further alleged that upon search being made, 5004 liters of illicit liquor was recovered from the said seized truck.



The learned counsel for the petitioner has submitted that the petitioner is innocent and he happens to be the truck owner, hence, he has been falsely implicated in the present case. It is further submitted that the petitioner is resident of the state of Rajasthan and he is having a clean antecedent.

I have heard the learned counsel for the petitioner and this Court finds that admittedly, huge quantity of illicit liquor has been recovered from the truck belonging to the petitioner herein and the petitioner is required to join investigation to unearth as to the actual facts of the case, as also regarding the persons alleged to be having complicity in the matter of engaging in illicit liquor trade.

This Court further finds that on account of the bar under Section 76(2) of the Bihar Prohibition and Excise Act, 2016, which puts a bar on application of Section 438 of the Criminal Procedure Code, in relation to any case involving the arrest of any person on accusation of having committed an offence under the said act, the present petition for grant of anticipatory bail is not maintainable.

At this juncture, it might be relevant to note that by an order dated 19.12.2018 passed by a coordinate Bench of this Court in Criminal Miscellaneous No. 69522 of 2018 (Suresh



Singh & Anr. vs. The State of Bihar), the prayer for grant of anticipatory bail made on behalf of the petitioners of the said case was rejected as not maintainable, taking note of Section 76(2) of the Bihar Prohibition and Excise Act, 2016 and then the petitioner no. 2 of the said case had assailed the said order dated 19.12.2018 before the Hon'ble Supreme Court of India, by filing a special leave petition bearing SLP (Cri) No. 2581 of 2019. The Hon'ble Apex Court by an order dated 26.3.2019 has been pleased to dismiss the said special leave petition, however, with liberty to the petitioner to pursue remedy of regular bail, if so advised.

Having regard to the facts and circumstances of the case, as also the position as existing in fact as also in law and this Court being of the opinion that based on the allegations made in the first information report, a case under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 is made out, the present petition for grant of anticipatory bail stands dismissed, being not maintainable, however, with liberty to the petitioner to surrender before the learned court below and seek regular bail.

(Mohit Kumar Shah, J)

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