

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74377 of 2019

Arising Out of PS. Case No.-73 Year-2019 Thana- SIKTI District- Araria

=====

MUKHTAR ALAM @ MUKHTAR Son of Muslim Baniya @ Md. Muslim
Resident of Village - Singhiya, P.S.- Sikty, Distt.- Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Gopal Kumar Jha

For the Opposite Party/s : Mr.Sanjay Kumar Sharma

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 27-11-2019 Heard learned counsel for the parties.

This application for anticipatory bail arises out of Sikty P.S. Case No. 73 of 2019, corresponding to Special Case No. 667 of 2019, disclosing the offence under Sections 30(a), 38 of the Bihar Prohibition and Excise Act, 2016.

From the possession of co-accused Chhotu Alam, the police are said to have recovered 36 litres of illicit liquor, which was being brought from Nepal. Allegedly, the said Chhotu Alam was apprehended when he was trying to flee away on seeing the police party after leaving the motorcycle, which he was riding. Two persons with him, however, managed to flee away. Said Chhotu Alam disclosed the petitioner's name as one of the two persons who had managed to flee away.



Learned counsel appearing on behalf of the petitioner has submitted that except disclosure made by Chhotu Alam that the petitioner was also riding in the motorcycle, there is absolutely nothing against him to constitute an offence punishable under the Excise Act. He contends that as would be evident from the FIR that Chhotu Alam did not disclose to the police that the petitioner was one of the accomplices with him in carriage of illicit liquor and only because the petitioner was also there in the motorcycle, the accusation of trade of illicit liquor cannot be fastened with him. He has accordingly submitted that the bar under Section 76 of the Excise Act shall have no application in the absence of any allegation constituting offence punishable under Section 30(a) of the Excise Act.

Since I am of the, *prima facie*, view that the allegation does not constitute any offence punishable under Section 30(a) of the Excise Act in absence of any material to suggest that the petitioner was involved in commission of the offence, this application is allowed.

Let the petitioner, above-named, in the event of his arrest/surrender within six weeks from today in the court below, be released on bail on furnishing bail bonds of Rs. 10,000/-(ten thousand), with two sureties of the like amount, each to the



satisfaction of learned 2nd Additional Sessions Judge cum Special Judge, Araria in Sikty P.S. Case No. 73 of 2019, corresponding to Special Case No. 667 of 2019, subject to the condition as laid down under Section 438(2) of the Code of Criminal Procedure.

This is subject to the condition that the petitioner shall present himself before the Police/ Court, as the case may be, as and when required and in the event of failure on his part to appear before the court on two consecutive occasions, his bail bonds shall be liable to be cancelled.

(Chakradhari Sharan Singh, J)

Rajesh/-

U		T	
---	--	---	--

