

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1374 of 2020

Arising Out of PS. Case No.-373 Year-2019 Thana- BARACHATTI District- Gaya

Md. Yakub Ansari @ Akub Ansari, aged about 38 years, Male, Son of Amanat Ansari, Resident of Asurbandh Podarg, P.S.-Giridih, District- Giridih (Jharkhand).

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Shivendra Prasad

For the Opposite Party/s : Mr. Akbar Ali

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL ORDER

2 25-02-2020 Heard learned counsel appearing for the petitioner as well as learned Additional Public Prosecutor for the State.

2. Petitioner apprehends his arrest in connection with Barachatty P. S. Case No.373 of 2019 registered for the offences punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

3. The Self-statement of S.I. Kumar Saurabh, the Officer-in-Charge of Barachatti Police Station, Gaya goes to show that in huge quantity of Indian made foreign liquor was recovered from a truck, the driver and others were caught by the police. The driver and the others apprehended persons disclosed that the seized liquor belonged to one Sanjiv Singh, who was subsequently, apprehended by the police and who confessed his



guilt that he along with one Kashi Sao and Ramesh Kumar Mandal were doing business of liquor and so far as the seized truck is concerned, the same had been purchased by Kashi Sao.

4. Submission on behalf of the petitioner is that petitioner has been made accused in this case only on the basis that the seized truck belonged to petitioner. He submits that as a matter of fact, petitioner had already sold the aforesaid truck to Kashi Sao, but unfortunately the paper could not be transferred as a result whereof, the petitioner has been made accused in this case.

5. No doubt, Section 76(2) of the Bihar Prohibition and Excise Act, 2016 bars to entertain petitions under Section 438 of the Cr.P.C. in the cases registered under Excise Act. As already held by a Full Bench of this Court that if the F.I.R. does not constitute an offence of the Excise Act, in that circumstance, the anticipatory bail filed under Section 438 of the Cr.P.C. in case of Excise Act is maintainable.

6. In the present case, the F.I.R. does not disclose any offence of Excise Act against the petitioner and, therefore, in my view, this petition filed under Section 438 of the Cr.P.C. is maintainable.

7. Accordingly, this anticipatory bail petition is



allowed and it is ordered that petitioner, in the event of his arrest/ surrender within six weeks from the date of receipt of this order to the Court concerned, shall 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 Special Judge Excise, Gaya in connection with Barachatti P. S. Case No.373 of 2019, subject to conditions as laid down under Section 438(2) of the Cr.P.C.

(Hemant Kumar Srivastava, J)

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