

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 8572 of 2020**

Arising Out of PS. Case No.-109 Year-2019 Thana- NAUHATTA District- Saharsa

MD BARKAT Son of Jiyauddin Resident of Village - Navhatta Pashchimi,
Ward No. 9, P.S. - Nauhatta, District - Saharsa.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Amarnath Jha

For the Opposite Party/s : Mr.Pushpa Sinha. 1

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

2 **03-03-2020** Heard learned counsel for the petitioner and the
learned APP for State.

Petitioner apprehends arrest in connection with
Nauhatta Police Station (for brevity, PS) Case No 109 of 2019
corresponding to Special (Excise) Case No 561 of 2019
instituted for the offence punishable under Section(s) 30 (a) of
Bihar Prohibition and Excise Act, 2016.

7.500 liters of illicit Indian made foreign liquor is
alleged to have been recovered from behind the house of the
petitioner. It is submitted by petitioners' counsel that, based on
such recovery, there is no basis for implicating the petitioner as
the recovery is neither from his house nor the petitioner has any
concern with the same. It is submitted that the petitioner has



falsely been implicated in this case and that recovery is from a place having general public access. The manner in which the recovery has been made does not leave any scope for any case being made out against the petitioner under the provisions of the Bihar Excise and Prohibition Act. Earlier, the petitioner was implicated in Nauhatta PS Case No 146 of 2018 corresponding to Special Case (Excise) No 478 of 2018 in which he is on bail.

The learned APP for the State has opposed the prayer for anticipatory bail referring to the provisions contained in Section 76 (2) of the Bihar Prohibition and Excise Act and submitted that pre-arrest bail would not be maintainable.

This Court is conscious to the decision of the Full Bench in the case of *Ram Vinay Yadav -Versus- State of Bihar* reported in 2019 (2) PLJR 1089. Having regard to the law laid down in the said judgment and the submissions advanced on behalf of the petitioner, this Court, for the limited purpose of grant of anticipatory bail, is inclined to accept the submissions of learned counsel for the petitioner.

Considering the aforesaid facts, prayer of petitioner for grant of anticipatory bail is allowed. In the event of surrender/arrest of the petitioner, named above, before the Court below, within four (04) weeks from today, he shall be released



on bail on his furnishing bonds of Rs 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of Additional Sessions Judge II -cum- Special Judge (Excise), Saharsa in connection with Nauhatta PS Case No 109 of 2019 corresponding to Special (Excise) Case No 561 of 2019 subject to the conditions as laid down under Section 438 (2) of Criminal Procedure Code and also the following conditions:-

(i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as to how he is related with the petitioner. The bailor will also undertake to inform the Court if there is any change in the address of the petitioner.

(ii) That the petitioner will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

(Madhuresh Prasad, J)

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