

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10474 of 2020

Arising Out of PS. Case No.-490 Year-2019 Thana- SARAIYA District- Muzaffarpur

Tarkeshwar Chaudhary @ Tarkesh Chaudhary Son of Banshlal Choudhary
Resident of Village - Supna, P.S.- Saraiya, Distt - Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rudal Singh, Adv.

For the Opposite Party/s : Mr.Mritunjay Kumar Nirala, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 10-06-2020 The matter has been listed today for consideration
through Video Conferencing.

Heard learned counsel for the petitioner and the learned
APP for State.

Petitioner apprehend his arrest in connection with
Saraiya P.S. Case no. 490 of 2019 instituted for the offence
under Sections 30(a), 32(ii), 41(i) of the Bihar Prohibition and
Excise Act, 2016 and Sections 272 and 273/34 of the Indian
Penal Code.

The prosecution case alleges total recovery of 1020.960
liters of illicit foreign liquor from the '*Bathan*' of co-accused
Krishna Mohan Thakur @ Rudal Thakur. The petitioner's name
has come in the instant case on the basis of information from
spy that he was responsible for collecting the illicit liquor at the



place.

It is submitted by the petitioner's counsel that even as per F.I.R. there is no recovery from him and he was not present at the time of recovery even the '*Bathan*' belongs to co-accused. It is submitted that the name of the petitioner has been dragged in the instant proceedings on the basis of alleged information from spy without any basis. In view of the aforesaid circumstance, no case, whatsoever, would be made out against the petitioner under the Bihar Prohibition and Excise Act. It is further submitted that the petitioner is on bail in Saraiya P.S. Case No. 894 of 2008, in which, he was made an accused due to subsisting land dispute with his '*Gotiya*'.

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 of decision of the Full Bench in the case of *Ram Vinay Yadav vs. 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



counsel for the petitioner.

Considering the aforesaid facts, prayer of the petitioner for grant of anticipatory bail is allowed. In the event of surrender/arrest of the petitioner before the court below, named above, within four (04) weeks from today, he shall be released on anticipatory bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the **Spl. Judge, Excise, Muzaffarpur**, in connection with **Saraiya P.S. Case no. 490 of 2019**, subject to the conditions as laid down under Section 438(2) Cr. P.C. subject to 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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