

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10601 of 2020**

Arising Out of PS. Case No.-109 Year-2019 Thana- JAMHOR District- Aurangabad

AKHILESH BHUIYAN Son of Tetar Bhuiyan Resident of Village -
Mordihri, P.S.- Jamhore, District- Aurangabad

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Anirudh Kumar Verma, Advocate

For the Opposite Party/s : Mr.Dr. Kumar Uday Pratap, APP

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER**

2 10-06-2020 The matter has been listed today for consideration through Video Conferencing in view of the Nationwide Lockdown on account of the Covid 19 pandemic.

The learned counsels are appearing and making submissions from their residence. The Court Master and Secretary are also part of this virtual court proceedings from their homes, all with the aid of audio visual technology.

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

Petitioner apprehends arrest in Hamhore PS Case No. 109 of 2019 registered under Sections 272, 273, 34 of the IPC and Section 30(a) of Bihar Prohibition and Excise Act, 2016 .

Alleged recovery of 5.8 litres of illicit liquor in 29 pouches is from an under construction house of the petitioner.

Counsel for the petitioner submits that the place from where recovery is alleged is an under construction house and is accessible to all. In the circumstances, recovery even if is taken to be true, cannot be made basis of implicating the petitioner in Bihar Prohibition and Excise Act. In view of the facts and circumstances



above no case whatsoever would be made out under the provisions of Bihar Prohibition and Excise Act. Co- accused Pushpendra Kumar Singh has been allowed anticipatory bail in Cr. Misc. No. 72777 of 2019 (Annexure 2).

Learned APP has opposed the prayer for pre-arrest bail on the ground of the same being not maintainable in view of the statutory bar on pre-arrest bail under the Bihar Prohibition and Excise Act.

Considering the submissions and the facts, this Court, in view of the parameters for considering pre-arrest bail laid down in the case of ***Ram Vinay Yadav vs. State of Bihar reported in 2019 PLJR (2) 1089 (FB)***, is inclined to accept the submission by the petitioner for the limited purpose of grant of pre-arrest bail. The petitioner's prayer for anticipatory bail is allowed.

Accordingly, let the petitioner above named, in the event of arrest or surrender before the court below within four weeks from today, 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 Additional Sessions Judge VIIth -cum- Special Judge, Excise, Aurangabad in Jamhore PS Case No. 109 of 2019 subject to all conditions as laid down in Section 438(2) of the Criminal Procedure Code as 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.

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(Madhuresh Prasad, J)

