

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10416 of 2020

Arising Out of PS. Case No.-111 Year-2019 Thana- CHANDI District- Bhojpur

Sanju Yadav, Son of Mithilesh Yadav @ Mithilesh Singh, Resident of Village
- Ram Dihal Tola, P.S. - Chandi, District - Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Nihar Nandan Ambasta, Advocate

For the Opposite Party/s : Mr.Lakshmi Kant Sharma, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

4 22-06-2020 The matter has been listed today for consideration through video conferencing in view of the nationwide lockdown on account of 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.

The petitioner is apprehending his arrest in connection with Excise Case No.1185 of 2019 arising out of Chandi P.S. Case No.111 of 2019 registered for the offence punishable under Section 30(A) of the Bihar Prohibition and Excise Act, 2016.



On receiving information regarding manufacture of illicit country-made liquor in Village-Ram Dihal Tola, the police party has proceeded for the village. 15 litres each country-made liquor has been recovered from two motorcycles. On suspicion, the petitioner's house has been raided and it is alleged that some utensils were found from the *Angan* of the petitioner's house. The police party has found 400 litres of *Java Mahua* from behind the petitioner's house in a ditch.

Learned counsel for the petitioner submits that even as per the prosecution case, the police has come to the petitioner's house on suspicion. The recovery of 15 litres was not from the petitioner's possession. Even the motorcycle from which it was seized did not belong to the petitioner. It is further submitted that recovery of 400 litres of *Java Mahua* from a ditch behind the petitioner's house has raised a suspicion, leading to the petitioner's implication. There is no recovery from the petitioner's possession, non compliance with mandatory procedure under Section 100 Cr.P.C. and no forensic opinion regarding recovered substance being liquor. The offence under Section 30(a) of the Bihar Prohibition and Excise Act is not made out. The utensils recovered are cooking utensils for normal use. It is further submitted that the petitioner has no



criminal antecedents.

Learned APP for the State 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 Section 76(2) of the Bihar Prohibition and Excise Act.

Considering the rival submissions and the facts, this Court, in view of the parameters for considering pre-arrest bail laid down by a Full Bench of this Court in the case of ***Ram Vinay Yadav vs. State of Bihar***, reported in ***2019(2) PLJR 1089(FB)***, is inclined to accept the submissions advanced by the petitioner's counsel 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 his arrest or surrender before the court below within a period of four weeks from today, be released on bail on furnishing bail bond of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned 4th Additional Sessions Judge cum Special Judge, Excise, Bhojpur at Ara, in connection with Excise Case No.1185 of 2019 arising out of Chandi P.S. Case No.111 of 2019, subject to the conditions as laid down in Section 438(2) of the Code of Criminal Procedure as also 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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