

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20784 of 2020

Arising Out of PS. Case No.-351 Year-2019 Thana- BYPASS District- Patna

SAHIL KUMAR, S/o Nand Kishor Prasad, Resident of Nakhas Pind
Karmalichack, P.S.- Bye-Pass, District- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar Pandey, Adv.
For the Opposite Party/s : Mr. Meena Singh, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

ORAL ORDER

2 05-11-2020 The defect (s) as pointed out by the office be ignored.

Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor appearing for the State.

Petitioner apprehends his arrest in connection with
Bypass P.S. Case No. 351/2019 registered for offence
punishable under Section 30(a) of the Bihar Prohibition and
Excise Act, 2016.

Prosecution case is that one Sohani Mishra was
tenant in the house of petitioner and 130 litres of country made
liquor was recovered from the room of aforesaid Sohani Mishra
who disclosed that the petitioner had kept the aforesaid seized
liquor for sale.

Admittedly, nothing was recovered either from the



conscious possession of the petitioner or from the portion of the house, which was in possession of the petitioner. Para 3 of the petition goes to show that prior to registration of the case petitioner was not made accused in any case registered for the offences of Bihar Prohibition and Excise Act.

No doubt, Section 76(2) of the Bihar Prohibition and Excise Act prohibits to entertain the petition filed under Section 438 of the Cr.P.C. in respect of the offences of Bihar Prohibition and Excise Act but it has already been held by this Court that if the First Information Report *prima facie* does not disclose any offence of Excise Act, in that circumstance, the petition filed under Section 438 is maintainable.

In the present case, except the statement of co-accused, there appears to be nothing against the petitioner and mere disclosure made by co-accused is not sufficient to make out offence of Excise Act against the petitioner.

Therefore, in the aforesaid circumstance, in my view, this anticipatory bail is maintainable.

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, Patna, in connection with Bypass P.S. Case No. 351/2019, subject to condition as laid down under Section 438(2) of the Cr.P.C.

(Hemant Kumar Srivastava, J)

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