

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20373 of 2020

Arising Out of PS. Case No.-137 Year-2020 Thana- SIMRI District- Buxar

Sanjay Kumar Tiwari @ Munna Tiwari Son of Shankar Tiwari Resident of
Village - Kohransarai, P.S.- Kohransarai, District - Buxar

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Adv.

For the Opposite Party/s : Mr. Ram Priya Sharan Singh, A.P.P.

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

ORAL ORDER

- 3 25-09-2020 The office has pointed out altogether 16 defects.
- However, from perusal of office notes dated 17.06.2020, I find that at defect no. 5, office has pointed out that vakalatnama does not bear the original seal of jail authority. It is surprising enough as to how the office has pointed out the aforesaid defect particularly in the circumstance, when the present petition has been filed under Section 438 of the Cr.P.C. Moreover, the aforesaid defect is ignored and so far as remaining defects are concerned, learned counsel of the petitioner submits that he



shall remove the defects when the court starts normal function.

This petition under Section 438 of the Cr.P.C. has been filed on behalf of the petitioner through e. mail in connection with Simri P.S. Case No. 137 of 2020 registered under Sections 188, 269, 270, 271/34 of the Indian Penal Code and Section 30(a) of Bihar Prohibition and Excise Act.

Near about 4 litres country made liquor were recovered from a vehicle which belongs to the petitioner. Admittedly, at the time of recovery, petitioner was not found sitting in the said vehicle and the FIR discloses that after recovery when the driver was questioned by the police officials, the driver disclosed that one Abhimanyu Tiwary had asked him to pick up some articles from a village.

Learned counsel of the petitioner submits that petitioner happens to be present Member of Legislative Assembly of Buxar and as a matter of fact, his political rivals planted the present case against the petitioner and moreover, during course of entire investigation, not a single prosecution witness claimed that petitioner had made any talk with the aforesaid Abhimanyu Tiwary. He further submits that in view of the aforesaid fact, offence of Excise Act is not made out against the petitioner and, therefore, this anticipatory bail petition is



maintainable.

On the other hand, learned P.P. Incharge Mr. Ram Priya Sharan Singh opposed the prayer pointing out that recovery was made from a vehicle and the petitioner happens to be owner of the aforesaid vehicle.

Considering the aforesaid facts and circumstances as well as submissions of the parties, I do agree with the submissions of learned counsel of the petitioner that no prima facie case of Excise Act is made out against the petitioner and petition under Section 438 of the Cr.P.C. filed on behalf of the petitioner 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 Additional Sessions Judge-II cum Special Judge, Excise, Buxar in Simri P.S. Case No. 137 of 2020, subject to conditions as laid down under Section 438(2) of the Cr.P.C.

However, petitioner shall remove the defects as pointed out by the office, except defect no. 5, within four weeks from the date when the court starts normal function, failing



which this matter shall be listed before appropriate Bench for
passing necessary order.

(Hemant Kumar Srivastava, J)

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