

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26162 of 2020

Arising Out of PS. Case No.-312 Year-2019 Thana- MAHNAR District- Vaishali

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UMESH SAH @ UMESH KUMAR GUPTA Son of Jaikant Sah Resident of
Village - Cinema rad Mahnar, P.S.- Mahnar, District - Vaishali

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner/s : Ms. Bela Singh, Advocate

For the Opposite Party/s : Mr. Nagendra Prasad, APP.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 15-10-2020

As of now the Courts have not resumed normal physical hearing, the matter has been listed today for consideration through Video Conferencing.

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 Counsel for the State.

This Court would expect that the petitioner's Counsel would honour his undertaking in the instant proceedings regarding supply of requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

Petitioner apprehends arrest in Mahnar PS Case No. 312 of 2019 registered under Sections 30(a), 37(b), (c) of Bihar Prohibition and Excise Act, 2016.

The prosecution case is that house of co-accused Raja Kumar and Rajnish Kumar was raided leading to recovery of some illicit liquor. They have named co-accused Bajrang Sah as one of the persons who used to bring illicit liquor. From the house of Bajrang Sah also 10.450 liters of illicit liquor has been seized.

Learned Counsel for the petitioner submits that other than the fact that the petitioner happens to be father of co-accused Bajrang



Sah there is nothing to implicate the petitioner in the instant case. Neither there is any recovery nor Raja Kumar or Rajnish Kumar have stated his name as being one of those persons involved in trade of illicit liquor. The recovery is not from his possession and there is non compliance of Section 100 Cr.P.C. The recovered substance has not been put to forensic examination whether the same is illegal intoxicant liquor. The facts of the prosecution case therefore do not disclose any ingredient of the offence under the Bihar Prohibition and Excise Act.

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 made 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 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 2nd Additional Sessions Judge -cum- Special Judge, Excise Court, Vaishali in Mahnar PS Case No. 312 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.

(Madhuresh Prasad, J)

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