

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26149 of 2020

Arising Out of PS. Case No.-66 Year-2020 Thana- TARARI District- Bhojpur

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PINTU KUMAR @ ASHISH KUMAR Son of Shivji Yadav @ Shivji Singh
Resident of Village- Balua, P.S.- Piro, District- Bhojpur at Ara.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Nilendu Kumar Choudhary

For the Opposite Party/s : Ms. Meena Singh

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 14-10-2020 As of now, the Courts have not resumed normal physical hearing. The matter has been listed today for consideration through Video Conferencing.

Learned counsel are appearing and making submissions from their residence. The Court master and Secretary are also part of this virtual Court proceedings with the aid of audio visual technology.

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

Learned counsel for the petitioner is expected to honor his undertaking given in the instant case for depositing the requisite court fee and to remove the defects as pointed out by office when called upon.

Petitioner apprehends his arrest in connection with Tarari



P.S. Case no. 66 of 2020 instituted for the offence under Section 30A of the Bihar Prohibition and Excise (Amendment) Act, 2018.

The prosecution case alleges recovery of 40 liters country made '*Mahua*' wine from the tube tied to the motorcycle.

Petitioner's counsel submits that, admittedly, the petitioner was not apprehended at the spot. There is no recovery from the petitioner's possession. It is a case of false implication based on extraneous consideration. There is non-compliance with Section 100 Cr.P.C. in seizure of the alleged country made '*Mahua*' wine. There is no forensic opinion to sustain the fact that the recovered substance is actually an intoxicant. In view of these ingredients missing from the prosecution case offence under the Bihar Prohibition and Excise Act could not be made out against the petitioner. The petitioner has no criminal antecedents.

The learned APP for the State has opposed the prayer for anticipatory bail, referring to the provisions contained in Section 76(2) of the Bihar Prohibition and Excise Act and submitted that pre-arrest bail would not be maintainable.

This Court is conscious of decision of the Full Bench in the case *of Ram Vinay Yadav vs. State of Bihar* reported in



2019(2) PLJR 1089. Having regard to the law laid down in the said judgment and the submissions advanced on behalf of the petitioner, this Court, for the limited purpose of grant of anticipatory bail, is inclined to accept the submissions of counsel for the petitioner.

Considering the aforesaid facts, prayer of the petitioner for grant of anticipatory bail is allowed. In the event of surrender/arrest of the petitioner before the court below, named above, within four (04) weeks from today, he shall be released on anticipatory bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the 4th Additional District and Sessions Judge-cum- Spl. Judge Excise Act, Bhojpur at Ara, in connection with Tarari P.S. Case no.66 of 2020 ,subject to the conditions as laid down under Section 438(2) Cr. P.C. 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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