

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 23820 of 2020**

Arising Out of PS. Case No.-49 Year-2020 Thana- PAHARPUR District- East Champaran

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Shailesh Kumar S/o Vijay Prasad Resident of Village- Dashin Noneya
Paschhim tola, P.S.- Paharpur, Distt- East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr Rajesh Kumar, Advocate

For the Opposite Party/s : MrAwadhesh Kr Singh, APP

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

2 09-10-2020 As of now, the Courts have not resumed normal physical hearing. The matter has been listed today for consideration through Video Conferencing.

Learned counsels 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 the learned APP for the State.

Petitioner apprehends his arrest in connection with Paharpur Police Station (for brevity, PS) Case No 49 of 2020 instituted for the offence punishable under Sections 30 (a), 36 of Bihar Prohibition and Excise Act, 2016.



The prosecution case alleges recovery of 1260 liters spirit wine from the orchard next to the house of co-accused Bhutkun Yadav. It is alleged that some persons including the petitioner have been indulging in the trade of liquor.

Petitioner's counsel submits that even as per prosecution case, recovery is from the orchard next to co-accused Bhutkun Yadav's house. Recovery is not from the petitioner's possession or property. He was not even present at the place of recovery as per allegations made in the First Information Report and it is a case of false implication. Petitioner is a resident of different village and bears no criminal antecedent. The aforesaid facts make it clear that no offence whatsoever has been made out against the petitioner under the Bihar Prohibition and Excise Act apart from the fact that there is no compliance with the statutory procedure for seizure and that there is no forensic report to suggest that the recovered substance is intoxicant/illicit liquor.

Learned APP for the State has opposed the prayer for anticipatory bail, referring to the provisions of 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 -Versus- 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 learned counsel for the petitioner.

In the facts and circumstances of the case, prayer of petitioner for grant of anticipatory bail is allowed. In the event of surrender/arrest of the petitioner, named above, before the Court below, within four (04) weeks from today, he shall be released on bail on his furnishing bonds of Rs 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of Additional Sessions Judge IX -cum- Special Judge, Excise, East Champaran, Motihari in Paharpur PS Case No 49 of 2020 subject to the conditions as laid down under Section 438 (2) of Criminal Procedure Code and 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.

Learned counsel for the petitioner is expected to honour his undertaking given in the instant proceedings today for depositing requisite Court fee and removing the defect (s), as pointed out, when called upon to do so.

(Madhuresh Prasad, J)

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