

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 22768 of 2020**

Arising Out of PS. Case No.-108 Year-2020 Thana- SAHEBGANJ District- Muzaffarpur

PRABHU SINGH Son of Ganesh Singh Resident of Village - Balthi
Narsingh, P.S.- Sahebganj, Distt.- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr Yashraj Bardhan, Advocate

For the Opposite Party/s : Ms Nirmala Kumari, APP

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

2 29-09-2020 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 Sahebganj Police Station (for brevity, *PS*) Case No 108 of 2020 dated 29.02.2020 instituted for the offence punishable under Section (s) 272, 273 of Indian Penal Code and Sections 30 (a),



41 (1) of Bihar Prohibition and Excise Act, 2016.

193.395 liters of Indian Made Foreign Liquor and 20 liters of spirit has led to the petitioner's implication in the instant case.

Petitioner's counsel submits that from the allegations, it is evident that recovery is at a distance of 100 meters away from the petitioner's hutment. The recovery is from a place having general public access for which the petitioner cannot in any way be held liable. He is having clean antecedent and it is a case of false implication. The recovery being at a distance from petitioner's hut, offence under the Bihar Prohibition and Excise Act is not made out against the petitioner.

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 Special Judge, Excise, Muzaffarpur in Sahebganj PS Case No 108 of 2020 dated 29.02.2020 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)

M.E.H./-

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