

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23726 of 2020

Arising Out of PS. Case No.-51 Year-2020 Thana- GOVERNMENT OFFICIAL COMP.
District- Bhagalpur

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ASHISH KUMAR Son of Baijnath Mandal Resident of Brij Mohan Thakur
Lane, P.S.- Barari and District- Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Madan Mohan
For the Opposite Party/s : Ms Meena Singh

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 01-10-2020 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 Excise Case no. 51 of 2020 instituted for the offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

Having no criminal antecedents the petitioner apprehends his arrest on the alleged recovery of an amount of 91.950 liters of liquor.

It is submitted by the petitioner's counsel that recovery was from beneath the ground and one Gaurav Kumar was apprehended at the time of recovery who has stated the petitioner's name. Such accusation, based on confessional statement of co-accused has no evidentiary value.

The learned APP for the State has opposed the prayer for anticipatory bail by submitting that in course of investigation the fact that shop belonged to the petitioner has emerged. Learned counsel for the petitioner submits that even if investigation is taken to be correct, the recovery was 40 meter away from the shop, and as such, the recovery made from the place having general public access cannot be attributed to the petitioner. There is no forensic report certifying to be recovery of intoxicant and the offence under the Bihar Prohibition and Excise Act could not be made out against the petitioner.

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 Spl. judge Excise Act, Bhagalpur Dist. Bhagalpur in connection with Excise case no. 51 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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