

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 27426 of 2020**

Arising Out of PS. Case No.-40 Year-2020 Thana- HARLAKHI District- Madhubani

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MUKESH KUMAR YADAV Son of Dukhi Prasad Yadav Resident of Village-
Gangaur, Police Station- Harlakhi, District- Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr Sanjay Kumar Jha, Advocate

For the Opposite Party/s : Mr Dinesh Singh, APP

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

2 **27-11-2020** 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.

Mr Dinesh Singh, APP is appearing as it is submitted that the brief has been allotted to him by the office of Advocate General.

Petitioner apprehends his arrest in connection with Harlakhi Police Station (for brevity, *PS*) Case No 40 of 2020



dated 04.03.2020 instituted for the offence punishable under Sections 272, 273 of Indian Penal Code and Section 30 (a) of Bihar Prohibition and Excise Act, 2016 (for brevity, the *Act*).

Two motorcycles have allegedly been apprehended by the Patrolling Party. From the first motorcycle, 45 liters of Nepali country made liquor has been recovered and from the second motorcycle, 135 liters is alleged to have been recovered. The first motorcycle rider, namely, Shiv Ranjan Kumar has been apprehended and it is he who stated that the second motorcycle belongs to the instant petitioner and that they were carrying the liquor for the petitioner.

Petitioner's counsel submits that even as per prosecution case, the petitioner was not present at the place of recovery. The motorcycles also do not belong to the petitioner. Petitioner has no concern with the liquor which has been recovered from co-accused Shiv Ranjan Kumar. The petitioner bears a clean past and it is submitted that he has been implicated on extraneous considerations. The facts and circumstances stated does not make out any offence under the Act. The recovered article also has not been sent for forensic expert opinion to ascertain the fact that the same was intoxicant substance.



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 II -cum- Special Judge, Excise Act, Madhubani in Harlakhi PS Case No 40 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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