

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 23836 of 2020**

Arising Out of PS. Case No.-749 Year-2019 Thana- SITAMARHI District- Sitamarhi

VISHWAJIT VAYAHUT @ VISHWAJIT RAJ S/o Mohan Vayahut Resident of Village-Champanagar near the Ganinath Temple ward no.14, P.S.- Sitamarhi, District-Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr N K Agarwal, Sr Advocate Mr Alok Kumar Alok, Advocate
For the Opposite Party/s	:	MrAshok Kumar, APP

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

2 16-10-2020 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 Senior Counsel for the petitioner and the learned APP for the State.

Petitioner apprehends his arrest in connection with Sitamarhi Police Station (for brevity, PS) Case No 749 of 2019 instituted for the offence punishable under Sections 272, 273/34



of Indian Penal Code and Section 30 (a) of Bihar Prohibition and Excise Act, 2016.

In the under construction house of the petitioner, there is alleged recovery of 15 liters of Indian Made Foreign Liquor.

It is submitted by the petitioner's counsel that even as per allegation in the First Information Report (for brevity, FIR), the petitioner was neither present at the place nor the recovery is from his possession. The house, as per FIR, was under construction and accessible to various persons. The petitioner, therefore, cannot be made liable for recovery, if at all made from the premises. The police have not complied with Section 100 of Criminal Procedure Code in the matter of recovery nor there is any forensic report to submit that the recovered liquor is an intoxicant liquor. The facts and circumstances, therefore, do not make out a case under Bihar Prohibition and Excise Act, 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 Additional Sessions Judge II -cum- Special Judge, Excise Act, Sitamarhi in Sitamarhi PS Case No 749 of 2019 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./-

U		T	
---	--	---	--

