

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 23734 of 2020**

Arising Out of PS. Case No.-60 Year-2020 Thana- GOVERNMENT OFFICIAL COMP.
District- Muzaffarpur

=====

VIJAY SAHANI Son of Shokhnath Sahani Resident of Village- Kothiya, P.S.-
Kanti, District- Muzaffarpur.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr Ravi Ranjan, Advocate

For the Opposite Party/s : Mr Anand Kishore Choudhary, APP

=====

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 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 Excise Case No 60 of 2020 arising out of Prosecution Report No 5 of 2020 dated 21.05.2020 instituted for the offence punishable under Section (s) 30 (a) (c) of Bihar Prohibition and



Excise Act, 2016.

It is submitted by the petitioner's counsel that having no criminal antecedent, the petitioner apprehends his arrest in the case wherein there is total recovery of 10 liters of country made liquor and 120 Kgs of Mahua Flower. It is further submitted that the petitioner's implication is false. It is also submitted that there are three cases in respect of the same recovery from the same place on that day. This is one of the cases. The other two cases, which have been lodged, are Excise Case No 58 of 2020 and Excise Case No 59 of 2020. The recovery, as per the prosecution case, is also neither in presence of the petitioner nor there is any recovery from his possession. The recovered country made liquor has not been subjected to forensic scrutiny to ascertain whether the same is intoxicant. In the circumstances, no offence whatsoever is made out under the Bihar Prohibition and Excise Act.

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 Act, Muzaffarpur in Excise Case No 60 of 2020 arising out of Prosecution Report No 5 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)

M.E.H./-

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

