

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23732 of 2020

Arising Out of PS. Case No.-42 Year-2020 Thana- DIGHWARA District- Saran

Hira Sah @ Hira Lal Sah @ Hira Kumar, Son of Bhuteli Sah, Resident of
Village- Akbarpur, P.S.- Dariyapur, District- Saran at Chapra.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Satya Prakash, Advocate

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

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 05-10-2020 Since as of now the Courts have not resumed normal physical hearing, the matter has been listed today for consideration through video conferencing.

The learned counsels are appearing and making submissions from their residence. The Court Master and Secretary are also part of this virtual Court proceedings from their homes, all with the aid of audio visual technology.

Heard learned counsel for the petitioner and the learned APP for the State.

The petitioner is apprehending his arrest in connection with Dighwara P.S. Case No.42 of 2020 registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

The prosecution case is based on recovery of 9.569



litres Indian Made Foreign Liquor from a motorcycle which allegedly the petitioner has abandoned and fled away.

Petitioner's counsel submits that the case is one of false implication, solely based on antecedents. The petitioner was neither arrested at the spot nor has he any concern with the motorcycle from which liquor has been recovered. There is no compliance with Section 100 Cr.P.C., nor is there any forensic report in respect of the fact that the recovered liquor is actually intoxicant/liquor. The circumstances are such that no offence whatsoever has been made out against the petitioner under the Bihar Prohibition and Excise Act.

Learned APP for the State referring to the statutory bar on pre-arrest bail under Section 76(2) the Bihar Prohibition and Excise Act opposes the prayer.

Considering the rival submissions and the facts, this Court, in view of the parameters for considering pre-arrest bail laid down by a Full Bench of this Court in the case of ***Ram Vinay Yadav vs. State of Bihar***, reported in ***2019(2) PLJR 1089(FB)***, is inclined to accept the submissions advanced by the petitioner's counsel for the limited purpose of grant of pre-arrest bail. The petitioner's prayer for anticipatory bail is allowed.

Accordingly, let the petitioner, above named, in the



event of his arrest or surrender before the court below within a period of four weeks from today, be released on bail on furnishing bail bond of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned court of Special Judge, Excise, Saran at Chapra, in connection with Dighwara P.S. Case No.42 of 2020, subject to the conditions as laid down in Section 438(2) of the Code of Criminal Procedure as also 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.

This Court would expect that the petitioner's counsel would honour his undertaking in the instant proceedings regarding supply of the requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

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