

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 23816 of 2020**

Arising Out of PS. Case No.-72 Year-2020 Thana- BISHWAMBHARPUR District-
Gopalganj

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SHARDA YADAV Son of Nagina Yadav Resident of Village- Baliwan
Raimal, P.S.- Bisambharpur, District- Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr Vyas Kumar Mishra, Advocate
For the Opposite Party/s : Mr Ashok Kr Singh, APP

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

2 09-10-2020 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 Vishambharpur Police Station (for brevity, PS) Case No 72 of 2020 instituted for the offence punishable under Section 30 (a) of Bihar Prohibition and Excise Act, 2018.



Recovery of 7 liters of illicit liquor from the co-accused on motorcycle has led to lodging of the case. Petitioner has been named by the co-accused as the person who fled away from the motorcycle.

Petitioner's counsel submits that the petitioner has been falsely implicated in this case. He was neither present at the place nor any recovery has been made in his presence. The offence under the Bihar Prohibition and Excise Act is not attributable as the petitioner as he was not present at the time of seizure. There is no compliance with the requisite procedure for seizure. There is no forensic opinion certifying that the recovered substance is an intoxicant.

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, Gopalganj in Vishambharpur PS Case No 72 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./-

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