

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 28617 of 2020

Arising Out of PS. Case No.-326 Year-2019 Thana- BAKHARI District- Begusarai

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BARUN MAHTO @ VARUN KUMAR Son of Kalpu Mahto Resident of
Village - Vabhain, P.S.- Bakhri, District - Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr Binod Kumar, Advocate

For the Opposite Party/s : Mr Manoj Kumar, APP

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

2 **03-12-2020** 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 Manoj Kumar, 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 Bakhri Police Station (for brevity, *PS*) Case No 326 of 2019



instituted for the offence punishable under Section 30 (a) of Bihar Prohibition and Excise Act, 2016.

The recovery of 10 liters of country made liquor and fleeing away of 6 to 7 persons, who are said to have been indulging in illicit trade of the same, has led to lodging of this case.

Learned counsel for the petitioner submits that the alleged illicit liquor has been recovered from the filed of one Arun Mahto. Admittedly, the petitioner was not arrested at the place of recovery nor is there any recovery from his possession or property. His implication is based on alleged identification of a Chaukidar as being one of the persons who fled away. The facts and circumstances are such that no offence whatsoever would be made out against the petitioner under the Bihar Prohibition and Excise Act. The petitioner bears a clean antecedent and it is a case of false implication.

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, Begusarai in Bakhri PS Case No 326 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./-

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