

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28724 of 2020

Arising Out of PS. Case No.-80 Year-2020 Thana- JAYNAGAR District- Madhubani

SHANKAR DAS @ SHIV SHANKAR DAS Son of Kameshwar Das
Resident of Village- Bataunha, P.S.- Jaynagar, Dist- Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shailendra Kumar Jha, Adv.

For the Opposite Party/s : Ms. Meena Singh APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 18-12-2020 As of now, the Courts have not resumed normal physical hearing. The matter has been listed today for consideration through Video Conferencing.

Learned counsel 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.

Ms. Meena Singh, learned APP, is appearing as it is submitted that the brief has been allotted to her by the office of Advocate General. Her name may also be printed in the cause list.

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

Learned counsel for the petitioner is expected to honour



his undertaking given in the instant case for depositing the requisite court fee and to remove the defects as pointed out by office when called upon.

Petitioner apprehends his arrest in connection with Jaynagar P.S. Case no. 80 of 2020, G.R. No. 446 of 2020, instituted for the offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 and Sections 272 and 273 of the I.P.C.

From the two motorcycles borne accused persons there is alleged recovery of 151 liters of *Nepali* wine. It is alleged that the petitioner had fled away.

Petitioner's counsel submits that *Prima facie* allegation is highly improbable that 151 liters of *Nepali* wine was being carried on the motorcycles. The petitioner, admittedly, was not apprehended at the spot. There is no recovery of any liquor from his possession or from his house. The motorcycles do not belong to the petitioner, and he is on bail in Jaynagar P.S. Case No. 585 of 2018, pending against him since before. Seizure list is not in accordance with the provisions contained in section 100 Cr. P.C. There is no forensic opinion sustaining the allegation of the recovered substance being an intoxicant, and no case would be made out under the Bihar Prohibition and Excise Act.



The learned APP for the State has opposed the prayer for anticipatory bail, referring to the provisions contained in 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 vs. 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 counsel for the petitioner.

Considering the aforesaid facts, prayer of the petitioner for grant of anticipatory bail is allowed. In the event of surrender/arrest of the petitioner before the court below, named above, within four (04) weeks from today, he shall be released on anticipatory bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the Additional Sessions Judge-II-cum –Special Judge Excise Act, Madhubani, Dist. Madhubani, in connection with Jaynagar P.S. case no. 80 of 2020, G.R.No. 446 of 2020, subject to the conditions as laid down under Section 438(2) Cr. P.C. 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.

(Madhuresh Prasad, J)

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