

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28704 of 2020

Arising Out of PS. Case No.-89 Year-2019 Thana- PUNAURA District- Sitamarhi

Sunil Kumar, S/o Satyanarayan Mahto, Resident of Village- Punaura
Kodwara Tola, P.S.- Punaura, District- Sitamarhi

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Uday Kumar, Advocate

For the Opposite Party/s : Mr. Zainul Abedin, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 18-12-2020 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.

Mr. Zainul Abedin, learned APP is appearing for the State as it is submitted that the brief has been allotted to him by the office of Advocate General.

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

The petitioner is apprehending his arrest in connection with Punaura P.S. Case No.89 of 2019 registered for



the offence punishable under Sections 272, 273 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

451.180 litres illicit liquor is alleged to have been recovered. The name of the petitioner has come in the F.I.R. as it is alleged that he was dealing in such liquor.

Petitioner's counsel submits that it is out and out a false case. In the F.I.R., the recovery is alleged to have been made from a place which was meant for use by businessmen-in-transit and having general access. The seizure list, however, is at variance and discloses recovery from Bakri Bazar at Gaushala Chowk. The petitioner has not been apprehended at the place. Even as per the prosecution case, there is no recovery whatsoever from the petitioner's possession or property. The recovery is also not in accordance with Section 100 Cr.P.C. and there is no forensic opinion regarding the recovered substance being intoxicant. The petitioner has no criminal antecedents. The facts and circumstances are such that no offence whatsoever is made out against the petitioner under the Bihar Prohibition and Excise Act.

Learned APP for the State has opposed the prayer for pre-arrest bail on the ground of the same being not maintainable



in view of the statutory bar on pre-arrest bail under the Bihar Prohibition and Excise Act.

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 Additional District & Sessions Judge-II Cum Special Judge, Excise, Sitamarhi, District-Sitamarhi, in connection with Punaura P.S. Case No.89 of 2019, 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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