

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28720 of 2020**

Arising Out of PS. Case No.-36 Year-2019 Thana- EAST COLONY District- Munger

MD. SEHREAYAR MALLIK S/o- Md Nasimuddin R/o Village- Mirzapur
(Bardah), P.S.- Muffasil, District- Munger.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Raj Kumar Choudhary, Adv.
For the Opposite Party/s : Mr. Ganesh Prasad 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.

Mr. Ganesh Prasad Singh, learned APP, is appearing as it is submitted that the brief has been allotted to him by the office of Advocate General. His 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 East Colony P.S. Case no. 36 of 2019 instituted for the offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

3.750 liters of illicit liquor is alleged to have been recovered from a vehicle which belongs to the petitioner.

Relying upon Annexure-2 (affidavit of sale and purchase dated 22.03.2017), learned counsel for the petitioner, submits that the vehicle in- question was sold long back by the petitioner in the year 2017 itself. Even if the fact that liquor has been recovered from the vehicle in-question is taken to be true, then no offence whatsoever would be made out against the petitioner under the Bihar Prohibition and Excise Act, as the vehicle in-question does not belong to him. The petitioner's counsel further submits that there is no forensic opinion available on the record to sustain the allegations that recovered substance was an intoxicant.

Petitioner bears no criminal antecedents, as per the averments made in para 3 of the bail petition.

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 District Judge-3-cum –Special Judge Excise Act, Munger in connection with East Colony P.S. case no. 36 of 2019, 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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