

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 30066 of 2020**

Arising Out of PS. Case No.-505 Year-2019 Thana- MOTIPUR District- Muzaffarpur

AJAY RAI Son of Late Suresh Ray Resident of Village- Chakki Rasulganj,
P.S.- Motipur, District- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr Manoj Kumar, Advocate

For the Opposite Party/s : Ms Gulnar Begum, APP

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

2 **23-12-2020** 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 and the learned APP for the State.

Petitioner apprehends his arrest in connection with Motipur Police Station (for brevity, *PS*) Case No 505 of 2019 instituted for the offence punishable under Section 30 (a), 41 (1) (2) of Bihar Prohibition and Excise Act, 2018 (for brevity, *the*



Act).

The First Information Report alleges that the police has received secret information regarding illicit liquor trade by the petitioner from his house where liquor has been stored. The Police Party has allegedly recovered 259.200 liters of illicit liquor from the *Bhuskhar* in front of the petitioner's house.

Submission of the petitioner's counsel is that it is a case of false implication. Even, as per the prosecution case, no recovery of illicit liquor has been made from the petitioner's house or possession. Recovery is from alleged *Bhuskhar* in front of the petitioner's house having general public access for which petitioner, in no manner, is liable. The recovery is also not in accordance with Section 100 of Criminal Procedure Code and there is no forensic opinion that the recovered material is intoxicant. The petitioner bears a clean past, and no offence is made out under the Bihar Prohibition and Excise Act.

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 Special Judge, Excise, Muzaffarpur in Motipur PS Case No 505 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)

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