

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78268 of 2019

Arising Out of PS. Case No.-104 Year-2019 Thana- DARBHANGA District- Darbhanga

Rajesh Sah @ Nanki Sah @ Rajesh Kumar Sah @ Rajesh Prasad Son of Late
Radhe Sah Resident of Ward No.-17, Donar, P.S.- Town, District- Darbhanga

... .. Petitioner

Versus

The State Of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Pankaj Kumar Das

For the Opposite Party/s : Mr.Dr. Kumar Uday Pratap

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 08-01-2020 Heard learned Counsel for the petitioner and the learned
APP for the State.

Petitioner apprehends arrest in Town PS Case No. 104 of 2019 as well as G.O. Case No. 517 of 2019 registered under Sections 30(a) of Bihar Prohibition and Excise Act, 2016.

Prosecution story is that 123.855 litres of liquor was recovered from the house of one Ajay Choudhary. Two persons namely Rajan and Rakesh were apprehended at the spot. It is upon their disclosure that the petitioner and one another co-accused have been implicated in this case.

It is submitted by petitioner's Counsel that other than the statement of co-accused there is nothing to connect the petitioner with the alleged recovery. They were neither arrested at the spot nor any incriminating material has been recovered from the petitioner. It is submitted that in such circumstances no case would be made out under the provisions of Bihar Prohibition and Excise Act. Petitioner has also undergone bypass surgery and is suffering from heart ailment.

Learned APP has opposed the prayer. Referring to Section 76(2) of the Act it is submitted that prayer for pre-arrest bail



is not maintainable.

Considering the rival submission and the fact that the petitioner has no criminal antecedent, this court is inclined to accept the submission advanced on behalf of the petitioner.

Considering the aforesaid submissions prayer for anticipatory bail of the petitioners is allowed.

In the event of arrest or surrender before the court below within four weeks from today, let the petitioner above named be released on bail on furnishing bail bonds of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of 2nd Additional Sessions Judge -cum- Special Judge, Excise Act, Darbhanga in Town PS Case No. 104 of 2019 as well as G.O. Case No. 517 of 2019 subject to all conditions as laid down in Section 438(2) of the Criminal Procedure Code 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 in the trial and if he fails to do so on two consecutive dates, his bail will be liable to be cancelled.

(Madhuresh Prasad, J)

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