

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86936 of 2019

Arising Out of PS. Case No.-28 Year-2018 Thana- MAINATAND District- West Champaran

Mohammad Usama, Male, aged about 21 years, Son of Shah Mohammad Ansari, Resident of Bherihari Haraj, Narullahpur, P.S.- Shikarganj, District- West Champaran.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Gupta

For the Opposite Party/s : Mr. Tapeswar Sharma

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL ORDER

2 14-02-2020 Heard learned counsel appearing for the petitioner as well as learned Additional Public Prosecutor for the State.

2. Petitioner apprehends his arrest in connection with Mainatand P. S. Case No.28 of 2018 registered for the offences punishable under Section 414 of the I.P.C. and Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

3. No doubt, Section 76(2) of the Bihar Prohibition and Excise Act, 2016 prohibits to entertain petition filed under Section 438 of the Cr.P.C. in respect of cases registered under the provisions of the Bihar Prohibition and Excise Act, 2016, but in the present case, it is submitted on behalf of the petitioner that petitioner had purchased the seized motorcycle in the Year 2017 from one Md. Nejam, but subsequently, the said



motorcycle was stolen for which, petitioner gave Sanha and the aforesaid facts are evident from perusal of Annexure-2 and Annexure-3 series of the petition.

4. The first information report goes to show that police seized one motorcycle and recovered illicit liquor from the said motorcycle. Petitioner has been made accused in the case on the basis that he happens to be owner of the said motorcycle, but admittedly, neither petitioner was caught on the spot nor anything was recovered from his conscious possession and moreover, prior to alleged occurrence, the petitioner had already given Sanha in respect of theft of his motorcycle.

5. Therefore, In my view, no case under the provisions of the Bihar Prohibition and Excise Act, 2016 is made out against the petitioner and hence, the petition under Section 438 of the Cr.P.C. filed on behalf of the petitioner in the present case is maintainable.

6. Considering the aforesaid facts and circumstances of the case as well as submissions of the parties, this anticipatory bail petition is allowed and it is ordered that petitioner, in the event of his arrest/ surrender within six weeks from the date of receipt of this order to the Court concerned, shall 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 learned Special Judge, Excise, West Champaran, Bettiah in connection with Mainatand P. S. Case No.28 of 2018, subject to conditions as laid down under Section 438(2) of the Cr.P.C.

(Hemant Kumar Srivastava, J)

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