

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1423 of 2021

Arising Out of PS. Case No.-117 Year-2020 Thana- PIRI BAZAR District- Lakhisarai

Rajesh Kumar Singh, S/o Shree Mithilesh Prasad Singh, R/o Village-
Abhaipur (Masudan), P.S.- Piri Bazar, District- Lakhisarai

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Satyendra Narayan Singh, Advocate
For the Respondent/s : Ms. Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

4 13-08-2021 The matter has been listed for consideration through
virtual mode.

Re: I.A.No.01 of 2021

Limitation petition, bearing I.A. No.01 of 2021,
has been filed for condoning the delay in filing the instant
appeal.

Office has pointed out that the appeal was to be
filed by 19.12.2020. As per the acknowledgment (Annexure-1 to
the I.A.), electronic filing of the appeal has been done on
17.12.2020.

The counsel for the appellant submits that since
electronic filing has been done within time, the delay in
registering the appeal on account of limited Court functioning
during the COVID-19 pandemic would not stand in the way as



limitation.

The Court is inclined to accept the submissions. Delay is condoned. The appeal shall be treated to have been filed within time.

I.A. No.01 of 2021 stands allowed.

Re: Cr.Appeal(SJ) No.1423 of 2021

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

The appellant has preferred the present appeal under Section 89 of the Bihar Prohibition and Excise Act, 2016 against the refusal of his prayer for anticipatory bail, vide order dated 04.11.2020, passed by the learned Additional District & Sessions Judge-II-cum-Special Judge, Lakhisarai, in Anticipatory Bail Application No.750 of 2020, arising out of Piri Bazar P.S. Case No.117 of 2020, instituted for the offence under Section 30(a) of Bihar Prohibition and Excise Act, 2016 and also for setting aside the aforesaid order dated 04.11.2020.

Close on the heels of Piri Bazar P.S. Case No.134 of 2019, appellant's counsel submits that the appellant has been falsely implicated in this case based on recovery of 25 litres *Mahua* liquor. One Pankaj Kumar Singh (co-accused) has been arrested along with illicit liquor. The appellant's identification is



based on disclosure made by village *Chowkidar*. Counsel for the appellant submits that the appellant was not present at the time and place of recovery, even as per the prosecution case. There is no recovery from the appellant's possession and the identification is based on suspicion and is highly unreliable. Between 08-10 P.M. in the night, there was no source of light to sustain the identification. The appellant's false implication cannot be ruled out. The submission is that no case under the Bihar Prohibition and Excise Act is made out against the appellant, having regard to the aforesaid facts and circumstances.

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 and circumstances of the case, 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 appellant's counsel for the limited purpose of grant of pre-arrest bail. The appellant's



prayer for anticipatory bail is allowed.

Let the appellant, 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, Lakhisarai, in connection with Piri Bazar P.S. Case No.117 of 2020, 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 appellant who will give an affidavit giving genealogy as to how he is related with the appellant. The bailor will also undertake to inform the court if there is any change in the address of the appellant.

(ii) That the appellant 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.

In the result, the appeal is allowed and the impugned order dated 04.11.2020, passed by the learned Additional District & Sessions Judge-II-cum-Special Judge, Lakhisarai, in Anticipatory Bail Application No.750 of 2020, arising out of



Piri Bazar P.S. Case No.117 of 2020, is set aside.

This Court would expect that the appellant’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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