

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31322 of 2020

Arising Out of PS. Case No.-1 Year-2020 Thana- EKANGARSARAI District- Nalanda

MADHU KUMAR Son of Tunni Prasad Resident of Village- Kundavapar,
P.S.- Ekangarsarai, District- Nalanda.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rajeev Kumar, Adv.

For the Opposite Party/s : Mr. Ajay Kumar-2, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 11-01-2021 Heard learned counsel for the petitioner and the
learned APP for 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 Ekangarsarai PS Case No 01 of 2020, instituted for the offence under Section 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2018.

286.185 litres of foreign liquor is alleged to have been recovered from a house and a vehicle parked in front of the house.



Petitioner's counsel submits that as per the prosecution case the petitioner was a tenant in the premises, from which, some liquor has been recovered. It is submitted that the FIR reveals that tenancy was to commence in December, 2019 itself. Prior to petitioner taking possession of his rented premises, and only at the time when the negotiation for rent was going on between the parties the recovery has been made and taking advantage of the situation he has falsely been implicated by the landlord. The petitioner has no concern, nor is there any recovery from the petitioner's exclusive possession and the vehicle also from which the recovery has been made does not stand in the petitioner's name and he has no concern with the said vehicle. In the facts and circumstances of the case, no case whatsoever would be made out against the petitioner under the Bihar Prohibition and Excise Act.

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 petitioners, 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, named above, before the court below, 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 Sessions Judge-III-cum-Special Judge, Excise, Nalanda at Biharsharif, in connection with Ekangarsarai PS Case No 01 of 2020, 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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