

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39019 of 2020

Arising Out of PS. Case No.-290 Year-2020 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

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SHYAMNANDAN KUMAR @ MITHU RAI S/o Basdev Rai @ Vasdev Ray
R/o Village- Amghatta Bhagwatipur, Khirree Tola, Ward No. 4, P.S. and
District- Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mr. Braj Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 31-05-2021 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Heard the learned counsel for the petitioner and the learned A.P.P. for the State, Sri Braj Kishore Prasad.

This is an application for grant of anticipatory bail in connection with Complaint C2 Case No. 290 of 2020 registered for the offence punishable under Section 30(a) of the Bihar Prohibition and



Excise Act, 2016.

The allegation is regarding recovery of 2.055 liters of illicit foreign liquor from the back side of the house of the petitioner.

The learned counsel for the petitioner submits that the petitioner is innocent, he has been falsely implicated in the present case and he is having a clean antecedent. The learned counsel for the petitioner has further submitted that neither the recovery of illicit liquor has been made from the conscious possession of the petitioner nor from within the house of the petitioner, hence, no case is made out under the provisions of the Bihar Prohibition and Excise Act, 2016. It is also submitted that there is no compliance of Section 100 Cr.P.C. while preparing the seizure list, hence, the seizure itself stands vitiated in the eyes of law.

Per contra, the learned APP for the State, Sri Braj Kishore Prasad, has vehemently opposed the prayer for bail.

Having regard to the facts and circumstances



of the case, considering the submissions made by the learned counsel for the petitioner and taking into account the materials available on record, this Court finds that neither the illicit liquor has been recovered from the conscious possession of the petitioner nor from inside his house, hence, prima facie, this Court finds that no case is made out under the provisions of Bihar Prohibition and Excise Act, 2016, as far as consideration of the present bail petition is concerned, thus the bar under Section 76(2) of the Bihar Prohibition and Excise Act, 2016 shall not be an impediment for grant of anticipatory bail to the petitioner herein, consequently, I deem it fit and proper to enlarge the petitioner above named, in the event of his arrest or surrender before the court below within a period of eight weeks from the date of receipt/production of a copy of this order, on anticipatory bail on furnishing bail bond of Rs. 10,000/- (rupees ten thousand) with two sureties of the like amount each to the satisfaction of learned



Additional District and Sessions Judge-II-cum-Special Judge Excise Act Sitamarhi in connection with Complaint C2 Case No. 290 of 2020, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

(Mohit Kumar Shah, J)

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