

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36316 of 2023

Arising Out of PS. Case No.-131 Year-2023 Thana- GOVERNMENT OFFICIAL COMP.
District- Vaishali

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Kanchan Kumar, S/O Mangru Ray @ Mangar Ray, R/O Terasiya, P.S-
Gangabridge, Distt.- Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Anuj Kumar, Advocate

For the Opposite Party/s : Mr.Mritunjay Kumar Nirala, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 21-07-2023 Heard learned Counsel for the petitioner and learned

APP for the State.

2. The petitioner is apprehending arrest in Vaishali (Prohibition & Excise) P.S. Case No. 131/2023 registered on 19.02.2023 for the offences punishable under Sections 30(a), 32(1), 32(3), 41(1), 41(2) of the Bihar Prohibition and Excise (Amendment) Act, 2018 (hereinafter referred to as the Act of 2018).

3. As per the prosecution, the co-accused, namely, Kundan Kumar, has been apprehended by the police, and from his possession total of 200 liters of illicit country-made liquor were recovered loaded on an auto. The apprehended auto driver has confessed the name of the petitioner in this case to the effect that the present petitioner along with others has provided this



vehicle which is being used to distribute the illicit liquor.

4. It is submitted by learned counsel for the petitioner that he is well aware that anticipatory bail is not applicable in cases under the Excise Act in light of Section 76(2) of the Act of 2018. He further submits that the petitioner has neither apprehended nor is the owner of the Auto nor somebody has seen him committing the alleged offence nor he has been found indulged in the purchase, sale, transportation, manufacturing, and distribution of illicit liquor. According to him, no offence is made out against him under the Excise Act. He further submits that the only material against him is the confessional statement of the co-accused in this case. He submits that the finding of *Tofan Singh Vs. State of Tamil Nadu* reported in *AIR 2020 SC 9592* is very much clear by virtue of confession the accusation shall not be proved. A statement has been made in paragraph no.3 of the petition that the petitioners are not having any criminal antecedent.

5. Learned counsel for the State opposes the prayer for bail and submits that the anticipatory bail is not applicable in the case of Excise Act, but also agrees that in the absence of any ingredients for constitution of any offence, the matter shall be otherwise.



6. In the aforesaid facts and circumstances, let the above-named petitioner be released on anticipatory bail, in the event of arrest or surrender before the learned Court below within a period of four weeks from today, on furnishing bail bond to the satisfaction of the learned Exclusive Special Prohibition and Excise Court No.2-cum-Additional District and Sessions Judge, Vaishali at Hajipur, in connection with Prohibition and Excise Vaishali Hajipur P. S. Case No.131 of 2023, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Dr. Anshuman, J)

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