

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46711 of 2023**

Arising Out of PS. Case No.-90 Year-2021 Thana- SIMRI District- Darbhanga

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DEVENDRA MAHTO @ ABHAY JHA @ DEVENDAR MAHTO SON OF
NARAYAN MAHTO RESIDENT OF VILLAGE- BUJURG DWAR, PS-
KHANPUR, DISTT- SAMASTIPUR

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Nilendu Kumar Choudhary

For the Opposite Party/s : Mr.Kumar Ranjit Ranjan

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**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER**

2 04-08-2023 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner is apprehending his arrest in connection with Simri P.S. Case No. 90 of 2021 registered for the offences punishable under Sections 420, 467, 468, 414 and 34 of the Indian Penal Code and Sections 30(a), 41(i), 41(ii) of the Bihar Prohibition and Excise (Amendment) Act, 2018.

3. As per prosecution case, there is alleged recovery of 4232.460 litre foreign liquor from the truck in question. It is further alleged that co-accused Govind Kumar who was apprehended on the spot alongwith two other co-accused persons disclosed the name of the present petitioner and stated that petitioner was sitting on the Scorpio vehicle and he



managed to escape from the place of occurrence.

4. Learned counsel for the petitioner submits that petitioner is innocent and has committed no offence as alleged in the FIR and he has falsely been implicated in this case. Petitioner bears criminal antecedent of one case of similar nature in which the petitioner is on bail. He further submits that name of the present petitioner has been transpired in this case upon the disclosure of apprehended co-accused Govind Kumar. Except disclosure of co-accused, there is nothing on record to demonstrate the complicity of the present petitioner with the alleged occurrence. He further submits that from the perusal of F.I.R. it appears that the petitioner was sitting in a Scorpio vehicle which was followed by a truck loaded with illicit liquor which does not constitute any offence under the Excise Act. Nothing incriminating article has been recovered from the possession of the petitioner and he has no concern either with the seized liquor or with the seized truck in question. There is no compliance of Section 100 of Cr.P.C. and petitioner is not present at the place of occurrence. In the light of the aforesaid facts and circumstances, no case is made out against the petitioner under the provision of the Bihar Prohibition and Excise Act.

5. The learned A.P.P. for the State opposes the prayer for anticipatory bail of the petitioner.



6. Considering the facts and circumstances of the case, argument advanced on behalf of both sides and also taking into consideration the material available on record, the petitioner above-named, in the event of his arrest or surrender before the learned trial court within a period of six weeks from today, be released 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 Special Judge Excise – II, Darbhanga in connection with Simri P.S. Case No. 90 of 2021, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Alok Kumar Pandey, J)

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