

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62440 of 2023

Arising Out of PS. Case No.-58 Year-2023 Thana- HATHIDAH District- Patna

Nitish Kumar S/O Vilayati Paswan R/O Village- Dharampur, Ps. Hatidah-Barh, Dist. Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Manoj Kumar Pandey, Adv
		Ms. Kumari Pallavi, Adv
For the Opposite Party/s :		Ms. Pushpa Sinha, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 16-10-2023 1. Heard learned counsel for the petitioner and the learned APP for the State.

2. The petitioner is apprehending his arrest in connection with Hathidah P.S. Case No. 58 of 2023 registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act.

3. The police have received information that the petitioner has kept some illicit liquor behind the school. Based on such information, they have arrived at the place and one person started fleeing. They have recovered 50.880 liters illicit liquor in two bags.

4. It is submitted by the learned counsel for the petitioner that the recovery is from an open place, having access



to one and all. The petitioner cannot be attributed any criminal liability for the recovery in question, based on the narration of events in the FIR. His name has been dragged in this case on account of his antecedents, which are of offences otherwise and not under the Bihar Prohibition and Excise Act. Four cases pending against the petitioner have been stated in the para-3 of the bail application.

5. 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.

6. Considering the rival submissions, petitioner's implication based on secret information, and the fact that recovery has been made from an open place, 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)*, for the limited purpose of grant of anticipatory bail, is inclined to accept the submissions of learned counsel for the petitioner.

7. Petitioners' prayer for anticipatory bail is allowed.

8. Accordingly, let the petitioner, 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 Special Excise Judge, Barh district Patna in connection with Hathidah P.S. Case No. 58 of 2023, 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 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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