

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44486 of 2022

Arising Out of PS. Case No.-250 Year-2020 Thana- GOVERNMENT OFFICIAL COMP.
District- East Champaran

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RUPESH KUMAR YADAV @ RUPESH YADAV SON OF FATEHI YADAV
@ FATINGA RAI R/O VILLAGE- LAKSHIMPUR KACHAHARIYA
TOLA, P.S.- TURKAULIA, DISTRICT- EAST CHAMPARAN

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

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

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

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 22-11-2022 Heard learned counsel for the petitioner and the

learned A.P.P. for the State.

The petitioner apprehends his arrest in a case
registered for the offence under Sections 30(a) and 47 of the
Bihar Prohibition and Excise Act.

Recovery is of 449.28 liters of foreign liquor.

Learned counsel appearing for the petitioner
submits that the petitioner is innocent and has falsely been
implicated in this case. He further submits that the recovery
has been made from the house of the co-accused, Mohan
Thakur and, in fact, nothing has been recovered from the
conscious possession of the petitioner. He further contends
that name of the petitioner has transpired in this case on the



basis of confessional statement of the co-accused, Anil Yadav and save and except the confession of the co-accused, no cogent material has surfaced against the petitioner during course of investigation. He further submits that the petitioner has no concern at all with the alleged recovery and the co-accused. Therefore, the alleged recovery cannot be attributed to the petitioner. He further submits that there is non-compliance with mandatory procedures prescribed for recovery under Section 100 of the Cr.P.C. No case, whatsoever alleged in the F.I.R., is made out against the petitioner under the Bihar Prohibition and Excise Act. Hence, the petitioner may be granted the privilege of anticipatory bail.

The learned A.P.P. for the State has vehemently opposed the prayer for grant of anticipatory bail to the petitioner and referring to the provision contained in Section 76(2) of the Bihar Prohibition and Excise Act, he submits that pre-arrest bail is not maintainable. Further he submits that the petitioner carries one more case other than the present one.

This Court is aware of the decision of the Full Bench rendered 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 aforesaid judgment and the submission advanced on behalf of the parties, this Court, for the limited purpose of grant of anticipatory bail, is inclined to accept the submission of counsel for the petitioner.

Considering the facts and circumstances of the case and also the fact that nothing has been recovered from the conscious possession of the petitioner, let the, above named, petitioner in the event of arrest of surrender before the court below within a period of four weeks from the date of order 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 learned Court below where the case is pending in connection with Excise Case No. 250 of 2020, subject to the conditions laid down under Section 438(2) of the Cr.P.C. as also with the following conditions:-

(1) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court and shall remain physically present as directed by the Court and on his/her absence on two consecutive dates without sufficient reason, his/her bail bond shall be



canceled by the Court below.

(2) If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

And, further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage, it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajesh Kumar Verma, J)

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