

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46853 of 2022**

Arising Out of PS. Case No.-188 Year-2022 Thana- GAUTAMBUDHNAGAR District-
Siwan

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BINAY PRASAD @ VINAY PRASAD Son of Asarfi Prasad R/v- Sani
Basantpur, P.S- G.B. Nagar, District- Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prabhakar Singh, Advocate

For the Opposite Party/s : Mr. Indu Kumari Srivastava, APP

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**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER**

2 18-11-2022 Heard learned counsel for the petitioner and learned

Additional Public Prosecutor for the State in the virtual court
proceeding.

Learned counsel for the petitioner is permitted to
remove the defect(s), as pointed out by the office, if any, within
a period of four weeks from today.

The petitioner is apprehending his arrest in a case
registered for the offences punishable under Section, 30(a) of
Bihar Excise Prohibition 2016 and under Section 25(1-b)A/26
of the Arms Act.

Recovery is of 10 liters of country made illicit liquor,
10 liters 800 ML bier.

Learned counsel for the petitioner submits that the



petitioner has clean antecedent and has falsely been implicated in the present case. He further submits that the recovery has been made from grocery shop and not from petitioner's possession. Therefore, the recovery cannot be attributed to the petitioner. There is non-compliance with mandatory procedure prescribed for recovery under Section 100 of Cr.P.C. No case, whatsoever, would be made out against the petitioner under the Bihar Prohibition and Excise Act.

The learned Additional Public Prosecutor has vehemently opposed the prayer for anticipatory bail of the petitioner referring the provision contained in Section 76(2) of the Bihar Prohibition and Excise Act and submitted that the pre-arrest bail would not be maintainable.

This court is aware of the decision of the Full Bench in the case of **Ram Vinay Yadav vs. State of Bihar** reported in **2019(2) P.L.J.R. 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 aforesaid facts, nothing has been recovered from conscious possession of the petitioner, let the



petitioner, above named, in the event of his arrest or surrender before the court below within a period of thirty days from the date of receipt of the 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 the learned Court below where the case is pending in connection with G.B. Nagar P.S. Case No. 188 of 2022, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other 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 absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled 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.

3. And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any state 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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