

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49480 of 2022**

Arising Out of PS. Case No.-91 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Muzaffarpur

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Rahul Kumar @ Rahul Sahani Son of Munna Sahni Resident of Village -
Harpur Lohari, P.S.- Ahiyapur, District - Muzaffarpur, Bihar.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Kumar Singh, Advocate
For the Opposite Party/s : Mr. Md. Mushtaque Alam, A.P.P.

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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 virtual court
proceeding.

Let the defects, as pointed out by the office, be
removed within a period of four weeks from today.

The petitioner apprehends his arrest in a case
registered for the offences punishable under Sections 30(a)(c)
and 36 of Bihar Prohibition and Excise Act, 2016.

Recovery is of total 100 liters of illicit liquor.

Learned counsel for the petitioner submits that
petitioner has clean antecedent and he has falsely been
implicated in the present case only on the basis of suspicion. He
further submits that the recovery has been made from the bank



of river Budhi Gandhak and not from petitioner's possession. Therefore, the recovery cannot be attributed to the petitioner. He further submits that 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 or **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 and circumstances, nothing has been recovered from conscious possession of the petitioner, let the petitioner, above named, in the event of his arrest or surrender within a period of four weeks from the date



of receipt of the order, be released on anticipatory 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 Excise Case No. 91 of 2021, P.R. 100/2021, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. and also 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 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 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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