

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51026 of 2022**

Arising Out of PS. Case No.-88 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Katihar

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SWAPAN KUMAR DAS Son of Sabendra Nath Das Resident of Village -
Porla Das tola, P.S.- Azamnagar, District - katihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Md. Musowir, Advocate
For the Opposite Party/s : Mr.Anil Kumar Singh No. 1, APP

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

2 21-11-2022 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.

Heard learned counsel for the petitioner and learned

Additional Public Prosecutor for the State.

The petitioner is apprehending his arrest in a case

registered for the offences punishable under Section 30(a) of

Bihar Prohibition and Excise Amendment Act 2016.

Recovery is of 85 liters of country made liquor.

Learned counsel for the petitioner submits that

petitioner has clean antecedent. He has falsely been

implicated in the present case. The name of the petitioner has

been transpired during investigation. Further submits that the



recovery has been made from the Tempo in question and not from petitioner's possession and the petitioner has sold the said Tempo to one Sanjay Ray vide affidavit dated 24.12.2018 (Annexure-2). 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.

Learned A.P.P. for the State has vehemently opposed the prayer for 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) 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 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 learned court below where the case is pending in connection with C.I. Case No. 88 of 2021, 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 their absence on two consecutive dates without sufficient reason, his bail bonds shall be cancelled by the Court below.

(2) If the petitioner tamper 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 antecedents, 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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