

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55554 of 2022

Arising Out of PS. Case No.-97 Year-2022 Thana- BARAULI District- Gopalganj

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BIRENDRA SHARMA @ VIRENDRA SHARMA @ VIRENDAR
SHARMA S/O SURAJ SHARMA Resident of Village- Sonbarsa, P.O.-
Salona, P.S.- Barauli, District- Gopalganj

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vikash Kumar Shukla, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 25-11-2022 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 Section 30(a) of the Bihar
Prohibition and Excise Act.

Recovery is of 26.6 liters of country made liquor.

Learned counsel appearing for the petitioner
submits that the petitioner, who is of clean antecedent, is
innocent and has falsely been implicated in this case. He
further submits that the recovery has been made from the
bushes in front of the house of the petitioner and, in fact,
nothing has been recovered from the conscious possession
of the petitioner. He further submits that the petitioner has



not been named in the F.I.R. but merely he happens to be the husband of the co-accused, Malti Devi, who has been apprehended by the police, he has been implicated in this case. He further submits that the petitioner has no concern at all with the alleged recovery. 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.

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 as also the fact that the petitioner has not been named in the F.I.R., 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 Barauli P.S. Case No. 97 of 2022, 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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