

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55763 of 2022

Arising Out of PS. Case No.-151 Year-2022 Thana- SAMASTIPUR MUFFASIL District-
Samastipur

=====

KUNDAN KUMAR @ KUNDAN RAY Son of Santlal Ray Resident of
Village - Chandauli, P.S.- Tajpur (Waini OP), Distt.- Samstipur.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Vikash Kumar Jha, Advocate
For the Opposite Party/s : Mr.Arvind Kumar Pandey, APP

=====

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 06-12-2022 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 Sections
30(a),41(1),41(2) of Bihar Prohibition and Excise (Amendment)
Act 2018.

Recovery is of 1659.780 liters of foreign liquor.

Learned counsel for the petitioner submits that
petitioner has falsely been implicated in the present case. The
name of the petitioner has been transpired on the basis of the
disclosure made by the local villagers. Further submits that the
recovery has been made from the vehicle in question and not
from petitioner's possession. Petitioner has no concern at all



with the alleged recovery of illicit liquor or the vehicles in question. Petitioner is neither the owner nor the driver of the vehicle in question. 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. Further submits that the petitioner carries one more case other than the present one.

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 and his



name has been transpired on the basis of the disclosure made by the local villagers, 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 Samastipur (Muffasil) P.S. Case No. 151 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 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)

Nitesh/-

U		T	
---	--	---	--

