

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58939 of 2022**

Arising Out of PS. Case No.-236 Year-2022 Thana- JAGDISHPUR District- Bhagalpur

MD. ZAKIR Son of Mohammad Zahir Resident of Bounsi Road, Khiriband,
P.S- Jagdishpur, Dist- Bhagalpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Madan Mohan, Advocate

For the Opposite Party/s : Mrs.Sangeeta Sharma, 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 Section 30(a) of Bihar Prohibition and Excise (Amendment) Act.

Recovery is of 49.5 liters of IMFL.

Learned counsel for the petitioner submits that petitioner has clean antecedent. He has falsely been implicated in the present case. Further submits that the recovery has been made from the Tempo in question and not from petitioner's possession. Petitioner is not named in the FIR. The name of the petitioner has been transpired for the reason that he is owner of the Tempo in question. In fact the



petitioner has already sold the Tempo to one Indar Paswan in February 2022 (Annexure-2) to the supplementary affidavit. 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 and his name has been transpired for the reason that he is owner of



the Tempo in question, 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 Jagdishpur (Goradih) P.S. Case No. 236 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)

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