

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60660 of 2022

Arising Out of PS. Case No.-275 Year-2022 Thana- SAKRA District- Muzaffarpur

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AVINASH MISHRA @ BUCHCHA SON OF MAHARUDRA MISHRA R/O
VILLAGE- MAHAMADPUR SHIVRAM, P.S.- SAKRA, DISTT.-
MUZAFFARPUR

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Hari Kishore Thakur, Advocate

For the Opposite Party/s : Mr. Bhanu Pratap Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 02-12-2022 Heard learned counsel for the petitioner and learned

Additional Public Prosecutor for the State in the virtual court

proceeding.

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.

The petitioner is apprehending his arrest in a case
registered for the offences punishable under Sections 272, 273,
120(B) and 420 of the Indian Penal Code and Section 30(a), 36
and 41(i)(ii) of Bihar Prohibition and the Excise Act, 2018.

Recovery is of 3436.920 liters of foreign made illicit
liquor.

Learned counsel for the petitioner submits that the



petitioner has clean antecedent and has falsely been implicated in the present case. The name of the petitioner has been transpired on the basis of confessional statement of co-accused persons. He further submits that the recovery has been made from truck in question and not from petitioner's conscious possession. Petitioner has no concern at all with the alleged recovery of illicit liquor or truck in question. Neither the petitioner is driver nor the owner of the truck in question. He further submits that the co-accused person namely, Ajay Jha alias Babua Don has been granted anticipatory bail vide order dated 20.11.2022 passed in Cr. Misc. No. 56185 of 2022 and the another co-accused namely, Amit Kumar has granted anticipatory bail vide order dated 02.12.2022 passed in Cr. Misc. No. 60340 of 2022. 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.

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 of **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, 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 the learned Court below where the case is pending in connection with Sakra P.S. Case No. 275 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 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 state 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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