

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62443 of 2022

Arising Out of PS. Case No.-532 Year-2022 Thana- MASAUDHI District- Patna

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Brajesh Kumar @ Brajesh Prasad Son of Yogendra Prasad R/o Mohalla Sakarpura, P.S.- Dhanarua, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Santosh Kumar, Advocate

For the Opposite Party/s : Mr. Khurshid Anwar, A.P.P.

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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 virtual court proceeding.

Let the defects, as pointed out by the office, be removed within a period of four weeks from today.

The petitioner apprehends his arrest in a case registered for the offences punishable under Section 30(a) of Bihar Prohibition and Excise Act, 2016.

Recovery is of total 30 liters of foreign liquor.

Learned counsel for the petitioner submits that petitioner has clean antecedent and he has falsely been implicated in the present case. He further submits that the recovery has been made from the house of co-accused namely Raj Kumar Pandey and not from petitioner's possession.



Therefore, the recovery cannot be attributed to the petitioner. He further submits that the name of the petitioner has been transpired on the basis of disclosure made by the local Chaukidar and except the disclosure of the local Chaukidar no cogent material has come during investigation against the petitioner. He further submits that 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 or **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 and circumstances,



petitioner has clean antecedent and nothing has been recovered from conscious possession of the petitioner and name of the petitioner has been transpired on the basis of disclosure made by local Chaukidar, let the petitioner, above named, in the event of his arrest or surrender within a period of four weeks from the date of receipt of the order, be released on anticipatory 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 Masaurhi P.S. Case No. 532 of 2022, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. and also 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 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 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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