

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65421 of 2022

Arising Out of PS. Case No.-248 Year-2022 Thana- WARISNAGAR District- Samastipur

MANOJ SAH Son of Gango Sah R/V- Dhobopur Bansara, P.S- Hayaghat,
Dist- Darbhanga

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anant Kumar Mishra, Advocate

For the Opposite Party/s : Mr.Md. Matloob Rab, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 09-12-2022 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State in virtual Court
proceeding.

The petitioner is apprehending his arrest in a case
registered for the offences punishable under Sections
30(A),41(2)(1),32(2),32(3) of Bihar Prohibition and Excise
(Amendment) Act, 2022.

Recovery is of 1963.920 liters of Foreign liquor.

Learned counsel for the petitioner submits that
petitioner has clean antecedent. He has falsely been implicated
in the present case. The name of the petitioner has been
transpired on the basis of the disclosure made by co-accused,
namely, Chandan Kumar Choudhary. Except, disclosure made
by co-accused, namely, Chandan Kumar Choudhary, no cogent



material has come, during investigation, against the petitioner. Further submits that the recovery has been made from the Truck in question and not from petitioner's possession. Petitioner is neither the driver nor the owner of the Truck in question and the petitioner has no concern at all with the alleged recovery of illicit liquor. 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. Further submit that co-accused, namely, Arjun Kumar has been granted privilege of anticipatory bail by a Coordinate Bench of this Hon'ble Court vide order dated 18.10.2022 passed in Cr. Misc. No.54036 of 2022.

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, he has clean antecedent and his name has been transpired on the basis of the disclosure made by co-accused, namely, Chandan Kumar Choudhary, 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 Warisnagar P.S. Case No. 248 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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