

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66381 of 2022

Arising Out of PS. Case No.-67 Year-2021 Thana- JAMHOR District- Aurangabad

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Bharat Prasad @ Bharat Prasad Yadav Son of Late Ram Bali Yadav Resident of House No. C- 160/381-A, Ismailpur, P.O- Gita Press Gorakhpur, P.S- Kotwali Gorakhpur, Dist- Gorakhpur (Uttar Pradesh).

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Nityanand Mishra

For the Opposite Party/s : Mr.Shailendra Kumar

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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.

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 (Amendment) Act, 2018.

Recovery is of total 945 liters of illicit 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 vehicle in question 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 that the petitioner is the owner of the vehicle in question. He further submits that in fact the petitioner has sold out the vehicle in question to one Manjay Singh on 10.03.2019 and thereafter, the petitioner was not the owner of the vehicle in question and he has no concern at the with the alleged recovery of illicit liquor or the vehicle in question. No case, whatsoever, would be made out against the petitioner under the Bihar Prohibition and Excise Act. He further submits that similarly situated co-accused persons namely, Raju Kumar, Ashok Kumar @ Ashok Singha nd Rajesh Singh have been granted anticipatory bail by a Co-ordinate Bench of this Court vide order dated 15.04.2022, 23.09.2022 and 15.04.2022 passed in Cr. Misc. No. 56724 of 2021, Cr. Misc. NO. 37035 of 2022 and Cr. Misc. No. 59729 of 2021 respectively and the case of the petitioner is better footing.

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, 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 Jamhore P.S. Case No. 67 of 2021, 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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