

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65754 of 2022

Arising Out of PS. Case No.-214 Year-2020 Thana- BARGAINIA District- Sitamarhi

Nitesh Mahto @ Nitesh Kumar Son of Nanhak Mahto @ Nanhe Mahato R/o
Vill.- Masaha Narottam Punarwas, P.S.- Barigania, Distt.- Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Hans Lal Kumar, Advocate

For the Opposite Party/s : Mr. Md. Nazir Ansari, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 12-12-2022 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

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 136.5 liters of Nepali Saufi wine.

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 co-accused person 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 transpired on the basis of confessional statement of co-accused namely, Ashok Kumar and Rambhu Kumar and except the aforesaid no cogent material has come during investigation against the petitioner. 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 person namely Morindra Sah @ Munindra Sah has been granted anticipatory bail by this Hon'ble Court vide order dated 02.11.2022 passed in Cr. Misc. No. 26467 of 2022 and the case of the petitioner is similar 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, nothing has been recovered from conscious possession of the petitioner and the name of the petitioner has transpired on the basis of confessional statement of co-accused namely, Ashok Kumar and Rambhu Kumar, 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 Bairgania P.S. Case No. 214 of 2020, 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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