

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66993 of 2022**

Arising Out of PS. Case No.-286 Year-2022 Thana- DAUDNAGAR District- Aurangabad

SHIV PUJAN BAHELIA @ SHIVPUJAN CHAUDHARY S/O Nachhatra
Baheliya R/o Village- Chauri, P.S.- Daud Nagar, Distt- Aurangabad (Bihar).

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kamendra Pd. Singh, Advocate
For the Opposite Party/s : Mr. Nityanand, A.P.P.

**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 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 Section 30(a) of
Bihar Prohibition and the Excise Act, 2018.

Recovery is of 20 liters of country made illicit liquor.

Learned counsel for the petitioner submits that the
petitioner has clean antecedent and has falsely been implicated
in the present case. He further submits that the recovery has
been made from garden situated near Surya Mandir and not



from petitioner's possession and petitioner has no concern at all with the garden. He further submits that the name of the petitioner has transpired on the basis of suspicion and thereafter the chaukidar has given statement to the police that the liquor in question belong to the petitioner. 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, petitioner has clean



antecedent and nothing has been recovered from conscious possession of the petitioner and the name of petitioner has transpired on the basis of suspicion, 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 Daud Nagar P.S. Case No. 286 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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