

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67355 of 2022**

Arising Out of PS. Case No.-543 Year-2019 Thana- PURNEA SADAR District- Purnia

Qadir @ Shahabuddin @ Sahabuddin S/O Usman R/O Village- Daulatpur,
Baldorai, P.S- Dalkola, District- Uttar Dinajpur (w.b).

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Arun Kumar Singh, 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 Sections 272, 273
of I.P.C. and Section 30(a) of Bihar Prohibition and the Excise
Act, 2016.

Recovery is of total 4610.160 liters foreign liquor of
different brand.

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 truck in question and not from petitioner's conscious possession. He further submits that the name of the petitioner has been transpired on the basis of disclosure made by the co-accused persons namely, Majarul and Md. Khabir. He further submits that the Majarul was driver and Md. Khabir was Khalasi of the truck in question and in fact the petitioner is owner of the truck in question. He further submits that the truck in question is a commercial vehicle and the petitioner handed over the same truck to the driver and Khalasi for running and carrying the goods as per requirement but the co-accused persons without permission of petitioner carrying illegal wine from truck in question. He further submits that 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.

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, nothing has been recovered from conscious possession of the petitioner, 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 Sadar P.S. Case No. 543 of 2019, 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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