

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37448 of 2023

Arising Out of PS. Case No.-74 Year-2023 Thana- BASOPATTI District- Madhubani

Kanhaiya Kumar Son Of Late Ajay Sah Resident Of Village - Basopatti
(chatti), P.S. - Basopatti, District - Madhubani

... .. Petitioner/s

Versus

The State Of Bihar, Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bhavesh Kumar Sah, Advocate

For the Opposite Party/s : Mr.Ganesh Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 28-07-2023 1. Heard learned counsel for the petitioner and the
learned APP for the State.

2. The petitioner is apprehending his arrest in
connection with Basopatti P.S. Case No. 74 of 2023 registered
for the offence punishable under Sections 272 and 273 of the
Indian Penal Code and Section 30(a) of the Bihar Prohibition
and Excise Act.

3. It is the prosecution case that the petitioner was
carrying a load of illicit liquor on his motorcycle. He has fled
away and motorcycle has been recovered.

4. The learned counsel for the petitioner submits that
falsity of the allegation is obvious from the seizure memo,
which alleges recovery of 387 litres of liquor from a
motorcycle. The petitioner is having no antecedents. The



allegations *per se* are highly improbable and impossible. The recovery of motorcycle, as per seizure list, is from road side and the petitioner has been implicated based on identification of certain sources, which are neither disclosed nor reliable. The circumstances therefore exist for this Court to arrive at a conclusion for the purposes of grant of anticipatory bail that no offence under the Bihar Prohibition and Excise Act is made out.

5. The learned APP for the State has opposed the prayer for anticipatory bail, referring to the provisions contained in Section 76(2) of the Bihar Prohibition and Excise Act and submitted that pre-arrest bail would not be maintainable.

6. Considering the rival submissions and the facts, this Court, in view of the parameters for considering pre-arrest bail laid down by a Full Bench of this Court in the case of ***Ram Vinay Yadav vs. State of Bihar***, reported in ***2019 (2) PLJR 1089(FB)***, is inclined to allow the prayer for anticipatory bail.

7. Accordingly, let the petitioner, above named, in the event of his arrest or surrender before the court below within a period of four weeks from today, 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 2nd Addl. Sessions Judge cum Special Judge Excise Act,



Madhubani in connection with Basopatti P.S. Case No. 74 of 2023, subject to the conditions as laid down in Section 438(2) of the Code of Criminal Procedure as also subject to the following conditions:

(i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as to how he is related with the petitioner. The bailor will also undertake to inform the court if there is any change in the address of the petitioner.

(ii) That the petitioner will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

(Madhuresh Prasad, J)

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