

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37748 of 2023

Arising Out of PS. Case No.-76 Year-2022 Thana- JOGBANI District- Araria

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Md Rustam Ansari @ Md Rustam Son Of Md Jamaluddin @ Md. Jamaluddin
Ansari Resident Of Village- Tikuliya Basti, Ward No. 10, PS- Jogbani,
District- Araria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Munish Om Prakash Singh

For the Opposite Party/s : Mr.Shailendra Kumar

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 28-07-2023 Heard learned counsel for the petitioner and learned

Additional Public Prosecutor (for brevity ‘APP’) appearing for

the State of Bihar.

2. The petitioner is apprehending his arrest in
connection with Jogbani P. S. Case No. 76 of 2022, dated
09-03-2022 registered for the offence punishable under Sections
30(a) of the Bihar Prohibition and Excise Act, 2016.

3. There is alleged recovery of 602 bottles of Dialex
DC cough syrup, which is alleged to have been buried in the
open tin shed owned by the petitioner and co-accused viz., Md.
Sardul Ansari. The total quantity is about 60.2 liters.

4. Learned counsel for the petitioner submits that no
case is made out under the provisions of the Bihar Prohibition



and Excise Act as the recovered substance is a medicine, sale, purchase and storage of which is covered by the provisions of the Drugs and Cosmetics Act, 1940. The petitioner has no criminal antecedents and as per allegation, recovery is from an open tin shed accessible to one and all.

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. This Court is conscious of decision of the Full Bench in the case of *Ram Vinay Yadav vs. State of Bihar* reported in *2019(2) PLJR 1089*. Having regard to the law laid down in the said judgment and the submissions advanced on behalf of the petitioner, this Court, for the limited purpose of grant of anticipatory bail, is inclined to accept the submissions of counsel for the petitioner. Prayer for anticipatory bail is allowed.

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



Exclusive Spl. Excise Court-II, Araria, in connection with Jogbani P.S. Case No. 76 of 2022 dated 09-03-2022, subject to the conditions as laid down in Section 438(2) of the Code of Criminal Procedure with 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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