

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39870 of 2023

Arising Out of PS. Case No.-140 Year-2023 Thana- DANAPUR District- Patna

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RAUSHAN @ MACHHIYA Son of Sri Rajesh Rai @ Rajesh Ray Resident of
Mohalla - Jhunjhun Wala Road, Danapur, P.S. - Danapur, Distt. - Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mrs.Gulnar Begum, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

5 04-10-2023 Heard Mr.Arvind Kumar, learned counsel for the

petitioner and Mrs.Gulnar Begum, learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Danapur P.S. Case No. 140 of 2023, FIR dated
31.01.2023 registered for the offence punishable under Sections
30(a),37(b)(c) of Bihar Prohibition and Excise Act, 2016.

3. Recovery is of 12.96 liters of illicit liquor.

4. Learned counsel for the petitioner submits that
petitioner has falsely been implicated in the present case. The
allegation as alleged in the FIR is false and fabricated and the
petitioner is never indulged in the business of liquor. Further
submits that from a bare perusal of the FIR it appears that
nothing has been recovered from conscious possession of the



petitioner rather the recovery has been made from other co-accused persons, namely, Pintu@ Doma and Sujit Kumar @ Teka and they have disclosed that they have received the liquor from the petitioner and except the aforesaid, no other material has come during investigation against the petitioner to suggest the involvement of the petitioner in the present occurrence and the petitioner has no concern at all with the alleged recovery of illicit liquor or the other co-accused persons. 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.

5. Learned A.P.P. for the State has vehemently opposed the prayer for 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. Further submits that the petitioner carries seven more cases other than the present one but fairly submits that the petitioner is on bail in all the seven cases, as mentioned in para-3 of the bail petition.

6. 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) PLJR 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.

7. 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 learned Special Judge, Danapur, Patna in connection with Danapur P.S. Case No. 140 of 2023, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other following conditions:-

(I) 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 their absence on two consecutive dates without sufficient reason, his bail bonds shall be cancelled by the Court below.



(II) If the petitioner tamper with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(III) 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 antecedents, 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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