

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48615 of 2023

Arising Out of PS. Case No.-79 Year-2022 Thana- FATEHPUR District- Gaya

PAPPU KUMAR, Son of Bhuneshwar Yadav, Resident of village - Ambatari,
P.S. - Chauparan, Distt. - Hazaribagh (Jharkhand)

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr.Onkar Nath, Advocate Mr.Panchanand Kumar, Advocate Mr.Mukesh Kr. Pandey, Advocate
For the State	:	Mr.Binod Kumar No.3, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 11-08-2023 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 Fatehpur P.S. Case No. 79 of 2022 registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2018.

3. 69.750 litres foreign liquor has been recovered from a vehicle. The driver of the vehicle disclosed the name of the petitioner as being the consignor of the illicit liquor.

4. Learned counsel for the petitioner submits that the petitioner has no concern with the recovered illicit liquor. His implication in this case is a sequel to his earlier implication in Fatehpur P.S. Case No. 347 of 2022 and Wazirganj P.S. Case



No. 576 of 2022. The fact that there is no recovery from the petitioner, and that he was not present at the place of occurrence, is apparent from the prosecution case itself. The facts noted above, having regard to the nature of implication, based on statement of co-accused, having no veracity in the eyes of law, is sufficient for this court to arrive at a conclusion that the offence under the Bihar Prohibition and Excise Act is not made out. For the purposes of anticipatory bail, the current allegations are to be examined and not the fact that the petitioner was earlier implicated into false cases.

5. The learned APP for the State has opposed the prayer for anticipatory bail. He has raised the objection regarding grant of anticipatory bail relying on Section 76(2) of the Bihar Prohibition and Excise Act.

6. Considering the rival submission, having regard to the decision of the Full Bench in the case of *Ram Vinay Yadav vs. State of Bihar* reported in *2019(2) PLJR 1089*, this Court finds that there is sufficient material to arrive at a conclusion, for the limited purpose of grant of anticipatory bail, that the offence is not made out.

7. Petitioner's prayer for anticipatory bail is allowed.



8. 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 court of Exclusive Special Excise Court No.-01, Gaya, in connection with Fatehpur P.S. Case No. 79 of 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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