

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59304 of 2023

Arising Out of PS. Case No.-46 Year-2023 Thana- SIRDALA District- Nawada

Mohan Kumar @ Mukesh Kumar S/O Karu Rajvanshi R/O Village- Jharna,
P.S. Sirdalla, District- Nawada.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pramod Kumar Verma, Advocate

For the Opposite Party/s : Mr.Md. Fahimuddin,APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-10-2023 Heard Mr.Pramod Kumar Verma, learned counsel for
the petitioner and Mr.Md. Fahimuddin, learned Additional
Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Sirdalla P.S.Case No.46 of 2023, F.I.R. dated
05.02.2023 registered for the offences punishable under
Sections 30(a),41 of Bihar Prohibition and Excise Act, 2016.

3. Recovery is of 131 liters of illicit liquor.

4. Learned counsel for the petitioner submits that
petitioner has clean antecedent. He has falsely been implicated
in the present case. As per allegation in the FIR the petitioner
and other co-accused persons have thrown the liquor and fled
away from the place of occurrence and on the basis of the
disclosure made by the local Chaukidar, the name of the



petitioner has been transpired in the present case. Learned counsel for the petitioner submits that it appears from the FIR that nothing has been recovered from conscious possession of the petitioner and the petitioner was not apprehended at the place of occurrence and on the basis of the disclosure made by the local Chaukidar, the name of the petitioner has been transpired in the present case. Further submits that the allegation as alleged in the FIR is false and fabricated and the petitioner has not committed any offence as alleged in the FIR. 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.

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, the name of the petitioner has been transpired in the present case on the basis of the disclosure made by the local Chaukidar, petitioner has clean antecedent, 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 Exclusive Special Excise Judge-1st, Nawada in connection with Sirdalla P.S.Case No.46 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 his/her absence on two consecutive dates without sufficient



reason, his/her 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/her 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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