

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58919 of 2023

Arising Out of PS. Case No.-143 Year-2023 Thana- BAJPATTI District- Sitamarhi

MD.MUSHTAK@MD.MOSHTAK SON OF LATE MD. SABBIR
RESIDENT OF VILLAGE- MADHUBAN BAZAR, PS- BAJPATTI, DISTT-
SITAMARHI

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Dr. Kumar Uday Pratap, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-10-2023 Heard Mr. Ranjeet Kumar Mishra, learned counsel

for the petitioner and Dr. Kumar Uday Pratap, learned

Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Bajpatti P.S. Case No. 143 of 2023 F.I.R. dated
12.05.2023 registered for the offences punishable under
Sections Section 30(a) of Bihar Prohibition and Excise Act.

3. Recovery is of 55.200 litres of *Nepali Sufti* liquor.

4. Learned counsel for the petitioner submits that the
petitioner is innocent and has falsely been implicated in the
present case on the basis of secret information and his criminal
antecedent of similar nature. He further submits that nothing
has been recovered from the conscious possession or the house



of the petitioner rather recovery has been made from the motorcycle in question and the petitioner is not the owner of the motorcycle in question and he has no concern at all with the alleged recovery of illicit liquor. 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. The learned Additional Public Prosecutor has vehemently opposed the prayer for anticipatory 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. He further submits that the petitioner carries one criminal antecedent other than the present one but fairly submits that he is on bail.

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) P.L.J.R. 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 Exclusive Excise Judge-II, Sitamarhi/concerned court in connection with Bajpatti PS. Case No. 143 of 2023, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other following conditions:-

1. 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 absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

2. If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

3. 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 antecedent, 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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