

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60234 of 2023

Arising Out of PS. Case No.-173 Year-2022 Thana- MOTIPUR District- Muzaffarpur

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UMESH KUMAR @ UMESH BHAGAT SON OF BAIDHNATH PRASAD
RESIDENT OF VILLAGE -MAJHAR, PS- PAKARIDAYAL , DIST- EAST
CHAMPARAN

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Manoj Kumar, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-10-2023 Heard Mr. Manoj Kumar, learned counsel for the

petitioner and Mr. Md. Iftexhar Mahmood, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Motipur P.S. Case No. 173 of 2022, FIR dated
03.05.2022, registered for the offences punishable under Section
30 (a) of the Bihar Prohibition and Excise Act.

3. Recovery is of 3195 litres of illicit liquor.

4. Learned counsel for the petitioner has submitted
that the petitioner has clean antecedent. He is not named in the
FIR and his name has transpired in the present case during
investigation only on the basis of confessional statement of co-
accused Om Prakash Ram and nothing has been recovered from



his conscious possession, rather recovery has been made from a truck in question. The petitioner owner of the said truck and he has no concern with the alleged recovery of liquor or the truck in question and except the confessional statement of co-accused, no other material has come during investigation suggests the involvement of the petitioner in the present case. 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 APP 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 learned counsel for the petitioner.



7. Considering the fact that the petitioner has clean antecedent, he is not named in the FIR and his name has transpired during investigation only on the basis of confessional statement of co-accused Om Prakash Ram and nothing has been recovered from the conscious possession of the petitioner, let him, in the event of his arrest or surrender within a period of four weeks, 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 Judge, Excise Court No. II, Muzaffarpur in connection with Motipur P.S. Case No. 173 of 2022, subject to the conditions laid down under Section 438(2) of the Cr.P.C and with further 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 absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

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

(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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