

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58453 of 2023

Arising Out of PS. Case No.-144 Year-2023 Thana- LALIT NARAYAN UNIVERSITY
District- Darbhanga

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BHARAT MAHTO SON OF LATE MISHRILAL MAHTO RESIDENT OF
VILLAGE - CHUNABHATTI, P.S. - UNIVERSITY (L.N.M.U.), DISTRICT
- DARBHANGA

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Girish Chandra Jha, Advocate

For the Opposite Party/s : Mr. Rabindra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-10-2023 Heard Mr. Girish Chandra Jha, learned counsel for

the petitioner and Mr. Rabindra Kumar, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with University (L.N.M.U.) P.S. Case No. 144 of
2023 F.I.R. dated 14.05.2023 registered for the offences
punishable under Section 30(a) of Bihar Prohibition and Excise
Act.

3. Recovery is of 24.300 litres of illicit liquor.

4. Learned counsel for the petitioner submits that the
petitioner has clean antecedent and has falsely been implicated
in the present case. He further submits that from perusal of the
F.I.R. as well as seizure list that altogether 24.300 litres of illicit



liquor has been recovered from the house of the petitioner. He further submits that there is non-compliance of Section 100 of the Cr. P.C. and the petitioner was not present at the time of seizure and the seizure list was not handed over to any family members of the petitioner. 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.

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 and petitioner having 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 Incharge Special Judge, Excise 2nd, Darbhanga in connection with University (L.N.M.U.) PS. Case No. 144 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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