

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57282 of 2023

Arising Out of PS. Case No.-74 Year-2023 Thana- KASIMBAZAR District- Munger

Deva Sahni, age about 27 years, Gender (Male), Son of Raja Ram Sahani,
Resident of Village- Godhi Tola (Lallu Pokhar), PS- Kasimbazar, District-
Munger

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ranjeet Patel, Advocate

For the Opposite Party/s : Mr. Nand Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 30-08-2023 Heard Mr. Ranjeet Patel, learned counsel appearing
on behalf of the petitioner and Mr. Nand Kumar, learned APP
for the State.

2. The petitioner seeks pre-arrest bail in connection
with Kasimbazar P.S. Case No. 74 of 2023 registered for the
offence punishable under Section 30 (a) of the Bihar Prohibition
and Excise Act as amended up-to-date.

3. As per the allegation made in the FIR, 20 litres of
country-made liquor (*Mahuaa*) was recovered near the temple.
Petitioner is named in the FIR on the basis of suspicion that they
were engaged in trade of illicit liquor.

4. Learned counsel appearing on behalf of the
petitioner submitted that petitioner has nine criminal



antecedents, however, the same are of different nature. As the petitioner has nine criminal antecedents, local police has implicated the petitioner in the present case merely on the basis of suspicion. He further submitted that law is well settled in this regard that a strong suspicion, howsoever, cannot take the place of proof and for suspicion an under-trial cannot be kept behind the bar, even after completion of investigation. Learned counsel in support of nine criminal antecedents pending against the petitioner submitted that the Court is to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of petitioner, who was not present at the place of occurrence cannot be sustained. Learned counsel further submitted that recently, in the case of *Mohammad Wajid & Anr. v. State of U.P. & Ors. (Criminal Appeal No. 2340 of 2023 arising out of S.L.P. (Criminal) No. 10656 of 2022)*, the Apex Court has quashed the FIR, in which petitioner was made accused and was having more than 35 cases. Petitioner further undertakes that he will not involve in any criminal case in future. On these grounds, petitioner seeks to be released on pre-arrest bail.

5. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail.



6. Having considered the rival submission made on behalf of the parties as well as the fact that the petitioner has been named in the FIR merely on the basis of suspicion. He was not involved in commission of offence with respect to illegal trade of liquor. Petitioner has nine criminal antecedents and in view of the law laid down by the Apex Court in case of ***Maulana Mohammad Amir Rashadi v. State of Uttar Pradesh and Another*** reported in (2012) 2 SCC 382, in which in paragraph no. 10, *inter alia*, it has been held as follows:

“10. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the court, etc.”

7. Considering the role of the petitioner as well as the fact that recovery of country-made liquor was only 20 litres, the petitioner has, *prima facie*, made out a case to be released on pre-arrest bail.

8. The petitioner, above named, is directed to be released on pre-arrest bail, in the event of his arrest or surrender



before the Court below within a period of four weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Exclusive Special Court (Excise)I, Munger in connection with Kasimbazar P.S. Case No. 74 of 2023, subject to the condition as laid down under Section 438(2) of the Cr.P.C.

8. The Court below is directed to verify the criminal antecedent of the petitioner as stated in paragraph no. 3 of the bail application. If any other case is pending against the petitioner as what has been stated in paragraph no. 3, this order will loose its force automatically.

(Purnendu Singh, J)

Niraj/Nilmani

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