

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59407 of 2023

Arising Out of PS. Case No.-352 Year-2023 Thana- GOVERNMENT OFFICIAL COMP.
District- Darbhanga

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Dinesh Yadav Son Of Late Kishun Yadav Resident Of Kathalwari, Bhandar
Chowk, Ward No. 12, Ps- L.N.M.U. Dist- Darbhanga

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Pankaj Kumar Das, Advocate
For the Opposite Party/s : Mrs.Rita Verma, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

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

petitioner and Mrs.Rita Verma, learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Excise P.S.Case No.352 of 2023, F.I.R. dated
04.03.2023 registered for the offences punishable under Section
30(a) of Bihar Prohibition and Excise (Amendment)Act, 2018.

3. Recovery is of 135 liters of illicit liquor.

4. Learned counsel for the petitioner submits that
petitioner has clean antecedent and he has falsely been
implicated in the present case merely on the ground that the
petitioner is owner of the Auto in question and as per the
allegation in the FIR, son the petitioner, namely, Rajesh Kumar



Yadav was apprehended alongwith illicit liquor and it appears from the FIR that nothing has been recovered from conscious possession of the petitioner and the petitioner has been made accused in the present case merely on the ground that the petitioner is owner of the Auto in question. 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, 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 Judge-I, Excise Act, Darbhanga in connection with Excise P.S.Case No.352 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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