

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57829 of 2023

Arising Out of PS. Case No.-129 Year-2023 Thana- DAUDPUR District- Saran

Saroj Kumar Mahto @ Saroj Mahto son of Parsuram Mahto village- Jaitpur
Ps- Daudpur Dist- saran at Chapra

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajit Kumar Singh, Advocate
For the Opposite Party/s : Mr. Ahmad Ali, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 18-10-2023 Heard Mr. Ajit Kumar Singh, learned counsel for the

petitioner and Mr. Ahmad Ali, learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Daudpur P.S. Case No. 129 of 2023, F.I.R.
dated 07.04.2023 registered for the offences punishable under
Section 30(a) of Bihar Prohibition and Excise (Amendment)
Act, 2016.

3. Recovery is of 540 litres of country made 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 received by the
police. He further submits that from perusal of the F.I.R. as
well as seizure list that nothing has been recovered from the



conscious possession of the petitioner rather recovery has been made from the shop in question and petitioner is neither the owner nor the worker of the said shop and he has no concern at all with the alleged recovery of illicit liquor and except the secret information, no other material has come during investigation to suggest the involvement of the petitioner in the present occurrence. 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 is named in the F.I.R. and the petitioner carries two more cases of similar nature but fairly submits on the basis of supplementary filed by the petitioner that the petitioner is on bail in both the pending cases.

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 the name of the petitioner has been transpired on the basis of secret information, 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 2nd Additional District and Sessions Judge cum Special Judge, Excise-1st, Saran at Chapra in connection with Daudpur PS. Case No. 129 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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