

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59302 of 2023

Arising Out of PS. Case No.-160 Year-2021 Thana- DURAULI District- Siwan

INDRAJIT BHAGAT @ INDRAJEET KUSHWAHA Son of Ram Chhabila
Bhagat R/o vill - Netwar, P.S. - Darauli, Distt. - Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bijay Prakash Singh, Advocate

For the Opposite Party/s : Mr.Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-10-2023 Heard Mr.Bijay Prakash Singh, learned counsel for the petitioner and Mr.Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Darauli P.S.Case No.160 of 2021, F.I.R. dated 22.07.2021 registered for the offences punishable under Sections 30(a),41 (1)of Bihar Prohibition and Excise Act, 2016.

3. Recovery is of 40 liters of Banti Babli country made liquor.

4. Learned counsel for the petitioner submits that petitioner has clean antecedent. He has falsely been implicated in the present case on the basis of the disclosure made by the local Chaukidar. Further submits that it appears from the FIR as well as the seizure list that nothing has been recovered from



conscious possession of the petitioner rather the recovery has been made from the motorcycle in question and the petitioner is not the owner of the motorcycle in question and he has no concern at all with the alleged recovery of illicit liquor or the motorcycle 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 Excise Court-1, Siwan in connection with Darauli P.S.Case No.160 of 2021 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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