

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59278 of 2023

Arising Out of PS. Case No.-173 Year-2020 Thana- RAJAOLI District- Nawada

ASHOK YADAV S/o MATHURA YADAV R/o vill - Babhanauli, P.S. -
Nardiganj, Distt. - Nawada

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Birendra Kumar, Advocate

For the Opposite Party/s : Mrs.Pronoti Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

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

petitioner and Mrs.Pronoti Singh, learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Rajauli P.S.Case No.173 of 2020, F.I.R. dated
29.04.2020 registered for the offences punishable under
Sections 30(a)/41 of Bihar Prohibition and Excise Act, 2016.

3. Recovery is of 50 liters of country made Mahua
liquor.

4. Learned counsel for the petitioner submits that
petitioner has clean antecedent. He has falsely been implicated
in the present case on the ground that the petitioner is owner of
the motorcycle in question. In fact one Subodh Kumar was
arrested with 50 liters of country made Mahua liquor. Further



submits 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 was not apprehended at the place of the occurrence and one co-accused, namely, Subodh Kumar was apprehended alongwith illicit liquor and the co-accused person has taken the motorcycle of the petitioner for some other work and he was apprehended with illicit liquor alongwith motorcycle 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. 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 and the name of the petitioner has been transpired on the basis that the petitioner is owner of the motorcycle in question, 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 Judge-II, Nawada in connection with Rajauli P.S.Case No.173 of 2020, 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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