

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59391 of 2023

Arising Out of PS. Case No.-281 Year-2023 Thana- BARUN District- Aurangabad

MITHALESH THAKUR @ MITHALESH KUMAR Son of Raghav Thakur
R/o vill - Dal Karma, P.S. - Barun, Distt. - Aurangabad

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Mukul Kumari, Adv.

For the Opposite Party/s : Mr.Satyendra Narayan Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-10-2023 Heard Ms. Mukul Kumari, learned counsel for the

petitioner and Mr. Satyendra Narayan Singh, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Barun P.S. Case No. 281 of 2023, G.R. No. 913 of 2023, FIR dated 21.06.2023, registered for the offences punishable under Section 30 (a) of the Bihar Prohibition and Excise Act.

3. Recovery is of 72.36 litres of illicit liquor.

4. Learned counsel for the petitioner has submitted that the petitioner has clean antecedent. He has falsely been implicated in the present case. He further submits that the name of petitioner has transpired during investigation and nothing has been recovered from the conscious possession of the



petitioner or his house, rather recovery has been made from a motor cycle in question. The petitioner has no, at all, concern with the alleged recovery or the motor-cycle in question and except disclosure made by the co-accused, no other material suggests the involvement of the petitioner in the present case. 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 APP 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 learned counsel for the petitioner.

7. Considering the aforesaid facts, nothing has been



recovered from the conscious possession of the petitioner, let the above-named petitioner, in the event of his arrest or surrender within a period of four weeks, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of learned Special Judge of Excise, Aurangabad in connection with Barun P.S. Case No. 281 of 2023, G.R. No. 913 of 2023, subject to the conditions laid down under Section 438(2) of the Cr.P.C and with further 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 absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

(ii) If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of his bail bond.

(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 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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