

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70840 of 2023

Arising Out of PS. Case No.-394 Year-2023 Thana- GOVERNMENT OFFICIAL COMP.
District- Samastipur

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Ajay Kumar @ Swaminathan Brijwala @ Swaminath Brijwala Son Of Suresh
Ray Resident Of Village- Dudhpura, Ps- Muffasil, Distt- Samastipur, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Piyush Kumar Pandey, Advocate
For the Opposite Party/s : Mr.Mukesh Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-11-2023 Heard Mr.Piyush Kumar Pandey, learned counsel
for the petitioner and Mr.Mukesh Kumar Singh, learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Excise Sadar (Samastipur) P.S.Case No.394 of 2023, corresponding to Excise GR No.473 of 2023, FIR dated 21.07.2023 registered for the offences punishable under Section 30(a) of Bihar Prohibition and Excise Act, 2018.

3. Recovery is of 3512.880 liters of foreign liquor.

4. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the present case merely on the basis of the secret information. Further submits that from a bare perusal of the FIR as well as the seizure list that nothing



has been recovered from conscious possession or the house of the petitioner rather the recovery has been made from the house of co-accused person, namely, Kanhaiya Sah and the petitioner has no concern at all with the alleged recovery of illicit liquor or the other co-accused person. 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 petitioners 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. Further submits that the petitioner carries two more cases other than the present one, as mentioned in para-3 of the supplementary affidavit.

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, name of the petitioner has been transpired on the basis of the secret information and the recovery has been made from the house of co-accused person, 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 Special Judge (Excise)-2, Samastipur in connection with Excise Sadar (Samastipur) P.S.Case No.394 of 2023, corresponding to Excise GR No.473 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 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 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 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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