

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60106 of 2023**

Arising Out of PS. Case No.-170 Year-2023 Thana- MADHUBANI TOWN District-
Madhubani

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DEEPAK SAH S/O SHAMBOO SAH, RESIDENT OF VILLAGE
LAHERIYAGANG WARD NO 01, PS- TOWN, DIST- MADHUBANI.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Bhavesh Kumar Sah, Adv.

For the Opposite Party/s : Mr.Ahmad Ali, APP

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**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER**

2 07-10-2023 Heard Mr. Bhavesh Kumar Sah, 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 Town P.S. Case No. 170 of 2023, FIR dated
28.05.2023, registered for the offences punishable under Section
30 (a) of the Bihar Prohibition and Excise Act.

3. Recovery is of 6.930 litres of illicit liquor.

4. Learned counsel for the petitioner has submitted
that the petitioner has falsely been implicated in the present case
on the basis of disclosure made by the co-accused persons,
namely, Nalin Kumar and Vikash Kumar. He further submits
that from perusal of the FIR as well as the seizure list, it appears
that nothing has been recovered from the conscious possession



of the petitioner. The petitioner has no concern, at all, with the alleged recovery or the co-accused persons and he has been made accused in the present case only due to previous criminal antecedents of similar nature. He next submits that three cases are pending against the petitioner, but he is on bail in all three cases. 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. Further submits that the petitioner carries three more cases other than the present one, but fairly submits that he is on bail in these three 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) 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 2nd Additional Sessions Judge-cum-Special Judge Excise Act, Madhubani in connection with Town P.S. Case No. 170 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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