

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60071 of 2023

Arising Out of PS. Case No.-146 Year-2023 Thana- MANIGACHI District- Darbhanga

MD. NIZAM @ MD. AZIM son of Md. Islam @ Md. Islam Kuzara Village-
Mahthour Ps- Manigachhi Dist- Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Nawal Kishor Prasad, Adv.

For the Opposite Party/s : Mr.Syed Mojibur Rahman, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-10-2023 Heard Mr. Nawal Kishor Prasad, learned counsel
for the petitioner and Mr. Syed Mojibur Rahman, learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Manigacchi P.S. Case No. 146 of 2023, FIR dated 08.07.2023, registered for the offences punishable under Section 30 (a) of the Bihar Prohibition and Excise Act.

3. Prosecution case, in short, is that on 08.07.2023, on the tip off, the informant reached at the place of occurrence and saw a person coming on motor cycle. Seeing the police party, the petitioner escaped away by taking advance of darkness leaving the motor-cycle and 27 litres of foreign liquor is said to have been recovered from the said motor-cycle.

4. Learned counsel for the petitioner submits that



the petitioner has clean antecedent. He has falsely been implicated in the present case on the basis of disclosure made by the local *Chowkidar*. He further submits that it appears from the FIR as well as the seizure list that nothing has been recovered from the motor-cycle in question and the petitioner is not owner of the said motor cycle. He has no concern with the alleged recovery or the motor-cycle in question. 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 fact that nothing has been recovered from the conscious possession of the petitioner and his name has transpired during the course of investigation on the disclosure made by the co-accused, having clean antecedent 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 Exclusive Special Judge-II, (Excise Act), Darbhanga in connection with Manigacchi P.S. Case No. 146 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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