

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61331 of 2023

Arising Out of PS. Case No.-238 Year-2023 Thana- BIBHUTIPUR District- Samastipur

Krishna Kumar @ Chhotan@ Chhotan Mahto @ Krishna Mahto S/O Hari
Narayan Mahto R/O Village- Patailiya, P.S. Bibhutipur, Dist. Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rabindra Kumar Priyadarshi, Advocate

For the Opposite Party/s : Mr. Surendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 16-10-2023 Heard Mr. Rabindra Kumar Priyadarshi, learned
counsel for the petitioner and Mr. Surendra Kumar, learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Bibhutipur P.S. Case No. 238 of 2023 F.I.R.
dated 05.07.2023 registered for the offences punishable under
Section 30(a) of Bihar Prohibition and Excise (Amendment)
Act, 2022.

3. Recovery is of 918.00 litres of foreign liquor.

4. Learned counsel for the petitioner submits that the
petitioner is innocent and has falsely been implicated in the
present case merely on the basis of suspicion and his previous
criminal antecedents. He further submits that from perusal of
the F.I.R. as well as seizure list that nothing has been recovered



from the conscious possession of the petitioner rather recovery has been made in the Government tubewell situated near the village road Karrakh and the petitioner has no concern at all with the alleged recovery and the name of the petitioner has been transpired on the basis of disclosure made by local choukidar and the choukidar has identified the petitioner who has fled away from the place of occurrence. Learned counsel for the petitioner further submits that due to village politics the petitioner has been implicated in the present case by the local choukidar. 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. The learned Additional Public Prosecutor has vehemently opposed the prayer for anticipatory 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. He further submits on the basis of paragraph-3 of the petition that the petitioner carries four more cases other than the present one and out of four cases, the petitioner is on bail in two 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) P.L.J.R. 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 and the name of the petitioner has been transpired on the basis of disclosure made by local choukidar, 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-1, Samastipur in connection with Bibhutipur PS. Case No. 238 of 2023, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other following conditions:-

1. 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.

2. 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.

3. 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 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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