

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70735 of 2023

Arising Out of PS. Case No.-716 Year-2022 Thana- GARKHA District- Saran

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JOGENDRA CHAUDHARY @ JOGINDRA CHAUDHARY son of Late
Bharat Chaudhary Village- Chintamanganj Ps- Garakha Dist- Saran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar Tiwary, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-11-2023 Heard Mr. Mrityunjay Kumar Tiwary, learned counsel

for the petitioner as well as Mr. Nand Kumar, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Garkha P.S. Case No.716 of 2022, F.I.R. dated 16.11.2022 registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act.

3. Allegation is of recovery of 30 liters countrymade liquor from a Banana orchard.

4. Learned counsel for the petitioner submits that petitioner has clean antecedent. He has falsely been implicated in the present case. He further submits that the allegation as alleged in the F.I.R. is false and fabricated and the petitioner has not committed any offence as alleged in the F.I.R. He further submits that from perusal of the FIR and seizure list that nothing



has been recovered from the conscious possession of the petitioner, rather recovery has been made from the Banana orchard and the petitioner has no concern with the alleged recovery or the Banana orchard. He further submits that the co-accused persons, namely, Lal Babu Chaudhary and Krishna Chaudhary has been granted bail vide order dated 18.10.2023 in Cr. Misc. No.66226 of 2023. 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.

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 that petitioner is having clean antecedent, nothing has recovered from the conscious possession of the petitioner, recovery has been made from the open space and the co-accused persons have been granted privilege of anticipatory bail, 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 anticipatory bail on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Judge-cum-Special Excise Court, Saran in connection with Garkha P.S. Case No.716 of 2022, 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 absence on two consecutive dates without sufficient reason, his bail bonds shall be cancelled by the Court below.

(ii) If the petitioner tamper with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of anticipatory 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 criminal antecedents, the court below shall take step for cancellation of anticipatory 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)

Prakash Narayan

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