

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66027 of 2023**

Arising Out of PS. Case No.-494 Year-2023 Thana- GOVERNMENT
OFFICIAL COMP. District- Lakhisarai

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RAJESH YADAV S/O LURO YADAV R/O VILLAGE- RAMPUR, YADAV TOLA,
P.S- SURYAGARHA, DISTT.- LAKHISARAI.

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Mukesh Kumar

For the Opposite Party/s : Mr.Madan Kumar

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 01-11-2023 Heard Mr. Mukesh Kumar, learned counsel for the

petitioner and Mr. Madan Kumar, learned A.P.P. for the State.

The petitioner apprehends his arrest in connection

with Excise Thana Lakhisarai Court Case No. 494 (C2) of

2023 registered for the offence under Section 30(a), 45 and

56(2) of the Bihar Prohibition and Excise Act.

Recovery is of 54 liters of Nepali country made

liquor.

Learned counsel appearing for the petitioner

submits that the petitioner is innocent and has falsely been

implicated in this case. He further submits that on bare

perusal of the F.I.R., it appears that co-accused, namely,

Gunjan Kumar has been apprehended and in the meantime,



some local persons have gathered there and they tried to get free the co-accused, Gunjan Kumar from the custody of the police in which the petitioner is said to be one of the member of the mob. He further submits that name of the petitioner has surfaced in this case on the basis of confessional statement of the co-accused, Vina Devi. He further submits that nothing has been recovered from the house or conscious possession of the petitioner. Save and except the confession of the co-accused, no cogent material has surfaced during course of investigation suggesting the involvement of the petitioner in the alleged occurrence. He further submits that there is non-compliance of Section 100 Cr.P.C. while preparing the seizure list, therefore, no case would be made out against the petitioner under the Bihar Prohibition and Excise Act.

Learned A.P.P. for the State has vehemently opposed the prayer for grant of anticipatory bail to the petitioner referring to the provisions contained in Section 76(2) of the Bihar Prohibition and Excise Act and submits that this application seeking pre-arrest bail would not be maintainable.

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.

Considering the facts and circumstances of the case and the fact that nothing incriminating has been recovered from the possession of the petitioner and he has been made accused in this case at the behest of the co-accused, Vina Devi and the petitioner is only stated to be a member of mob, let the, above named, petitioner, in the event of his arrest or surrender before the court below within a period of four weeks, 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 Additional Sessions Judge-V -cum- Exclusive Special Judge, Court No.2 (Excise Act), Lakhisarai in connection with Excise Thana Lakhisarai Case P.S. Case No. 494 (C2) of 2023, subject to the conditions laid down under Section 438(2) of the Cr.P.C. as also with the 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/her absence on two consecutive dates without sufficient reason, his/her bail bond shall be canceled 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.

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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