

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64741 of 2023

Arising Out of PS. Case No.-531 Year-2023 Thana- BIHTA District- Patna

VIVEK KUMAR @ KUNDAN, S/O Sri Om Prakash Sharma R/O Village-
Amhara, P.S- Bihta, Distt.- Patna.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. Niraj Kumar, Advocate
For the State	:	Mr. Arun Kumar, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 18-10-2023 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor (for brevity 'APP') appearing for
the State of Bihar.

2. The petitioner is apprehending his arrest in connection with Bihta P.S. Case No. 531 of 2023 registered for the offence punishable under Sections 30(a), 32(i)(ii), 36, 41(i)(ii) and 62 of the Bihar Prohibition and Excise Act.

3. As per prosecution case, there is recovery of 3496.72 liters of illicit liquor from a truck. One *Vishal Kumar* has been arrested who has stated the name of the present petitioner as being one of the persons indulging in the trade of illicit liquor.

4. Learned counsel for the petitioner submits that the petitioner, even as per allegation, was not present at the time and



place of recovery. There is no recovery from the conscious possession of the petitioner. He has been implicated in this case merely on the basis of confessional statement of co-accused *Vishal Kumar*. No case is made out against the petitioner.

5. The learned APP for the State has opposed the prayer for anticipatory bail, referring to the provisions contained in Section 76(2) of the Bihar Prohibition and Excise Act and submitted that pre- arrest bail would not be maintainable.

6. This Court is conscious of 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 said judgment and considering the rival submissions, nature of allegations and the fact that no recovery is made from the petitioner, this Court finds that the conditions for grant of anticipatory bail exists. The court, therefore, is inclined to allow the prayer for bail.

7. Petitioner's prayer for anticipatory bail is allowed.

8. Accordingly, let the petitioner, above named, in the event of his arrest or surrender before the court below within a period of four weeks from today, 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 the learned



Special Judge Excise, Danapur, District- Patna, in connection with Bihta P.S. Case No. 531 of 2023, subject to the conditions as laid down in Section 438(2) of the Code of Criminal Procedure with following conditions:

- (i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as to how he is related with the petitioner. The bailor will also undertake to inform the court if there is any change in the address of the petitioner.
- (ii) That the petitioner will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

(Madhuresh Prasad, J)

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