

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66435 of 2023

Arising Out of PS. Case No.-485 Year-2023 Thana- GOPALGANJ TOWN District-
Gopalganj

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Umesh Bin @ Umesh Prasad @ Umesh Rauat @ Umesh Rawat @ Ganesh
Bin S/O Bhutti Prasad R/O Village- Khaap Maksoodpur, P.S- Jadopur, Distt.-
Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Setu Prateek, Advocate

For the Opposite Party/s : Ms. Gulnar Begum, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 01-11-2023 Heard Mr. Setu Prateek, learned counsel for the

petitioner and Ms. Gulnar Begum, learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Gopalganj (Town) P.S. Case No. 485 of 2023,
F.I.R dated 22.06.2023 registered for the offences punishable
under Sections 30(a) and 41(i) of Bihar Prohibition and Excise
Amendment Act, 2016.

3. Recovery is of 204.75 liters of foreign made
liquor.

4. Learned counsel for the petitioner submits that
the petitioner has clean antecedent and has falsely been
implicated in the present case on the basis of disclosure made by



the co-accused person, namely, Aniruddh Mahato. He further submits that the allegation as alleged in the F.I.R is false and fabricated. He further submits that it appears from the F.I.R that nothing has been recovered from the conscious possession of the petitioner rather the recovery has been made from the boat in question and the petitioner has no concern at all with the alleged recovery of the illicit liquor of the boat in question. He further submits that except the disclosure made by the co-accused, no other material has come during investigation to suggest the involvement of the petitioner in the present occurrence. 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, nothing has been recovered from conscious possession of the petitioner and the petitioner has clean antecedent and the name of the petitioner has been transpired on the basis of the disclosure made by the co-accused, 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 the learned Additional District & Sessions Judge-II-cum Special Judge Excise Court No-I, Gopalganj in connection with Gopalganj (Town) P.S. Case No. 485 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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