

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68026 of 2023**

Arising Out of PS. Case No.-151 Year-2023 Thana- SIKTI District- Araria
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MD. MOSIM S/O LATE BUDHU ALI R/O VILLAGE- GADHAKAT, WARD NO.
8, P.S. SIKTI, DISTRICT- ARARIA

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gopal Kumar Jha
For the Opposite Party/s : Mr. Navin Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 19-10-2023 Heard Mr. Gopal Kumar Jha, learned counsel for the

petitioner and Mr. Navin Kumar Pandey, learned A.P.P. for the

State.

The petitioner apprehends his arrest in connection

with Sikti P.S. Case No. 151 of 2023 registered for the offence

under Sections 272, 273, 34 of the Indian Penal Code and

Section 30(a) of the Bihar Prohibition and Excise Act.

Recovery is of 258 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 on the basis of secret informant

received to the police. He further submits that on bare



perusal of the F.I.R., it appears that the petitioner is alleged to have thrown the illicit liquor and fled away after seeing the police from the place of occurrence and nothing incriminating has been recovered from the conscious possession of the petitioner. He further submits that the co-accused, Md. Kaushar and Jansar @ Md. Jawed against whom similar allegation is alleged that they have fled away from the place of occurrence, have been granted anticipatory bail by a co-ordinate Bench of this Court vide order dated 18.11.2023 passed in Cr. Misc. No. 64032 of 2023. 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. He further submits that the petitioner carries one more case of similar nature but he fairly submits that he is on bail in the pending case.



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 on the basis of suspicion, 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 Exclusive Special Judge, (Excise-II), Araria in connection with Sikti P.S. Case No. 151 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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