

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71220 of 2023

Arising Out of PS. Case No.-240 Year-2023 Thana- MEHSI District- East Champaran

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AMOD RAI @ ABODH KUMAR SON OF LATE SHAMBHU PRASAD
YADAV@ SHAMBHU RAI RESIDENT OF VILLAGE- BARJI DIH, BARJI
PASCHIMI (WEST), PS- MOTIPUR, DISTT- MUZAFFARPUR

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-11-2023 Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Mehshi P.S. Case No. 240 of 2023, F.I.R. dated 30.07.2023, registered for the offence punishable under Sections 272, 273 of the I.P.C. and Section 30 (a) of the Bihar Prohibition and Excise (Amendment) Act, 2016.

3. Recovery of 40 liters country made liquors from one plastic Jarkin.

4. Learned counsel for the petitioner submits that petitioner has clean antecedent and has been falsely implicated in the present case on the basis of disclosure made by the local Chowkidar. From a bare perusal of the F.I.R., it appears that nothing has been recovered from the conscious possession of the



petitioner, rather recovery has been made from the motorcycle in question and the petitioner has no concern at all with the alleged recovery of illicit liquor or the motorcycle in question and except the disclosure made by the local Chowkidar, no other cogent material has come during investigation against the petitioner 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 fact that nothing has



recovered from the conscious possession of the petitioner and the name of the petitioner has been transpired on the basis of disclosure made by the local Chowkidar, the petitioner has clean antecedent, 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 Exclusive Special Excise Court No.3, East Champaran, Motihari in connection with Mehsi P.S. Case No. 240 of 2023 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)

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