

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68117 of 2023

Arising Out of PS. Case No.-343 Year-2023 Thana- MINAPUR District- Muzaffarpur

Kamlesh Kumar Son of Nagendra Ram Resident of village - Kanti Kaswa,
P.S.- Kanti, District - Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar @ S.K., Advocate

For the Opposite Party/s : Mr. Narsingh Tanti, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 19-10-2023 Heard Mr. Sanjay Kumar @ S.K., learned counsel
for the petitioner and Mr. Narsingh Tanti, learned Additional
Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Minapur (Panapur O.P.) P.S. Case No. 343 of 2023 F.I.R. dated 11.08.2023 registered for the offences punishable under Sections 272, 273/34 of the Indian Penal Code and Section 30(a) of Bihar Prohibition and Excise Act, 2018.

3. Recovery is of 22 litres of *Desi Chulai* 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 co-accused person namely Ram Sevak Sah. He further submits that it appears from the F.I.R. as well as seizure list that 6 litres



of Desi Chulai liquor was recovered from co-accused Ram Sevak Sah and 16 litres of Desi Chulai liquor was recovered from the shop in question and the petitioner is neither the owner nor he has concern anywhere from the shop in question. He further submits that except the disclosure made by co-accused, no other material has come during investigation to suggest the involvement of the petitioner in the present occurrence and nothing has been recovered from the conscious possession of the petitioner. Therefore, the recovery cannot be attributed to the petitioner. 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 name of the petitioner has been transpired on the basis of disclosure made by co-accused person and petitioner having 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 bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, Excise Act, Excise Court Number-I, Muzaffarpur in connection with Minapur (Panapur O.P.) PS. Case No. 343 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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