

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68152 of 2023**

Arising Out of PS. Case No.-48 Year-2023 Thana- PAKRIDAYAL District- East Champaran

Dilip Sah @ Dilip Kumar Sharma S/O Doleshwar Sharma R/O Village-
Madhubani Ghat, P.S- Muffasil, Distt.- East Champaran.

... .. Petitioner/S

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Abhishek Kumar, Advocate

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

**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER**

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

petitioner and Mr.Anil Kumar, learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Pakaridayal P.S.Case No.48 of 2023,FIR dated 07.03.2023 registered for the offences punishable under Sections 272 and 273 of IPC and Section 30(a) of Bihar Prohibition and Excise Act, 2016.

3. Recovery is of 2213.1 litres of foreign liquor along with 14272.2 litres apple juice and fruity from a container parked near a kiln.

4. Learned counsel for the petitioner submits that the petitioner has clean antecedent and he has falsely been implicated in the present case. Further submits that from a bare



perusal of the FIR as well as the seizure list that nothing has been recovered from conscious possession of the petitioner rather the recovery has been made from the container and the petitioner has no concern at all with the alleged recovery of illicit liquor and on the basis of the disclosure made by the local Chaukidar the petitioner and other co-accused persons have escaped from the place of occurrence. Further submits that the co-accused persons, namely, Aman Singh @ Aman Kumar Singh and Naresh Prasad @ Naresh Bhagat have been granted privilege of anticipatory bail by different Coordinate Benches of this Hon'ble Court vide orders dated 05.07.2023 and 29.08.2023 passed in Cr. Misc. Nos.41966 of 2023 and 56527 of 2023 respectively. 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 petitioners under the Bihar Prohibition and Excise Act.

5. Learned A.P.P. for the State has vehemently opposed the prayer for 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) PLJR 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, petitioner has clean antecedent, nothing has been recovered from possession of the petitioner and the name of the petitioner has been transpired during investigation on the basis of the disclosure made by the local Chaukidar, 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 Exclusive Special Excise Court No.-3, Motihari, East Champaran in connection with Pakaridayal P.S.Case No.48 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/her absence on two consecutive dates without sufficient reason, his/her bail bond shall be cancelled by the Court below.

(II) 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.

(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/her 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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