

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70457 of 2023

Arising Out of PS. Case No.-693 Year-2023 Thana- TURKAULIYA District- East
Champaran

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SUNIL SAH @ SUNIL KUMAR Son of Late Lallan Sah Resident of Village-
Daroga Tola, P.S.-Banjariya, District-East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kundan Rathore @ Kundan Kumar, Advocate
For the Opposite Party/s : Mr. Ahmad Ali, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 01-11-2023 Heard Mr. Kundan Rathore @ Kundan Kumar,

learned counsel for the petitioner and Mr. Ahmad Ali, learned

Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Turkauliya (Banjariya) P.S. Case No. 693 of
2023 F.I.R. dated 15.06.2023 registered for the offences
punishable under Sections 30(a), 41(1) of Bihar Prohibition and
Excise Amendment Act, 2018.

3. Recovery is of 50 litres of countrymade 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
local choukidar. He further submits that from perusal of the



F.I.R. as well as seizure list that nothing has been recovered from the conscious possession of the petitioner rather recovery has been made from the bamboo orchard of co-accused Rameshwar Pandit and petitioner has no concern at all with the alleged recovery of illicit liquor. He further submits that except the disclosure made by local choudidar, 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 having clean antecedent and the name of the petitioner has been transpired on the basis of disclosure made by local choukidar, 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-1st, East Champaran, Motihari in connection with Turkauliya (Banjariya) PS. Case No. 693 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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