

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70458 of 2023

Arising Out of PS. Case No.-230 Year-2023 Thana- GARKHA District- Saran

PINTU KUMAR @ PINTU MAHTO Son of Amar Mahto Resident of Village
- Fulwariya, P.S.- Garkha, District - Saran at Chapra (Bihar).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mrs. Indu Kumari Srivastava, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 01-11-2023 Heard Mr. Rakesh Kumar, learned counsel for the

petitioner and Mrs. Indu Kumari Srivastava, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Garkha P.S. Case No. 230 of 2023 F.I.R. dated
05.05.2023 registered for the offences punishable under
Sections 30(A)/41/36 of Bihar Prohibition and Excise Act.

3. Recovery is of 2727.360 litres of English liquor.

4. Learned counsel for the petitioner submits that
the petitioner is innocent 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 truck in question and petitioner is neither the owner nor the driver of the truck in question and he has no concern at all with the alleged recovery of illicit liquor or the truck in question. He further submits that co-accused person namely Bablu Singh @ Bablu Kumar has been granted the privilege of anticipatory bail by a Coordinate bench of this Court vide order dated 07.08.2023 passed in Cr. Misc. No. 50833 of 2023. 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. He further submits that the petitioner carries two more cases other than the present one but fairly submits that the petitioner is on bail in both the cases.

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 local choukidar and similarly situated co-accused person has been granted the privilege of anticipatory bail, 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 2nd Additional District & Sessions Judge cum 1st Exclusive Special Judge, Excise, Saran at Chapra in connection with Garkha PS. Case No. 230 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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