

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71077 of 2023

Arising Out of PS. Case No.-283 Year-2023 Thana- MASHRAK District- Saran

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Golu Kumar @ Jiv Ranjan Rastogi Son Of Om Prakash Rastogi @ Om Prakash Prasad Village-Mashrakh Yadu More, P.S-Mashrakh ,District--SARAN

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mr.Md. Iftekhar Mahmood, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-11-2023 Heard Mr.Ashok Kumar, learned counsel for the

petitioner and Mr.Md. Iftekhar Mahmood, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Mashrakh P.S.Case No.283 of 2023, FIR dated 31.05.2023 registered for the offences punishable under Sections 30(a),32(3),38 of Bihar Prohibition and Excise Act, 2016.

3. Recovery is of 180.880 liters of illicit liquor.

4. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the present case on the basis of the disclosure made by the co-accused person, namely, Narayan Kumar Singh. Further submits that from a bare perusal



of the FIR it appears that nothing has been recovered from conscious possession or the house of the petitioner rather the recovery has been made from the room of co-accused person, namely, Narayan Kumar Singh and he has disclosed that the petitioner was apprehended from the place of occurrence and he also disclosed that the petitioner was also involved in the present case. 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. Further submits that the petitioner carries two more cases other than the present one.

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, nothing has been recovered from conscious possession of the petitioner and the name of the petitioner has been transpired on the basis of the disclosure made by the co-accused person, namely, Narayan Kumar Singh, 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 Exclusive Special Excise Judge/Incharge Successor Court, Saran at Chapra in connection with Mashrakh P.S. Case No.283 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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