

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70956 of 2023

Arising Out of PS. Case No.-499 Year-2021 Thana- BODHGAYA District- Gaya

Khurshid Anwar S/O Md. Murtaza Resident Of Village-Kulti Rani Talab,
D.V.C. Colony, Kulti, P.S- Kulti, Distt.- Burdwan, State- West Bengal.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Niranjan Parihar, Advocate

For the Opposite Party/s : Mr. Jai Narain Thakur, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-11-2023 Heard Mr. Niranjan Parihar, learned counsel for the
petitioner as well as Mr. Jai Narain Thakur, learned Additional
Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Bodh Gaya P.S. Case No.499 of 2021, F.I.R. dated 14.12.2021 registered for the offence punishable under Sections 272, 273/34 of the IPC and 30(a), 32(2), 33, 36, 41(1) of Bihar Prohibition & Excise Amendment Act.

3. Allegation is of recovery of 4200 liters of spirit from the truck.

4. Learned counsel for the petitioner submits that petitioner has clean antecedent and has falsely been implicated in this case. He further submits that from perusal of the FIR and 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 has no concern with the alleged recovery of the liquor. Further submits that name of the petitioner has been transpired in this case on the basis of the statement made by the apprehended truck driver, namely, Anul Haque. He further submits that the co-accused persons, namely, Chintu Yadav @ Prakash Kumar, Pappu Yadav @ Kundan Kumar have been granted anticipatory bail vide order dated 12.08.2022 in Cr. Misc. No.27985 of 2022 and Mithlesh Kumar has been granted anticipatory bail by this Court vide order dated 06.12.2022 in Cr. Misc. No.59818 of 2022. 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 that petitioner is having clean antecedent, nothing has recovered from the conscious possession of the petitioner, name of the petitioner has been transpired in this case on the basis of the statement made by the co-accused persons and the co-accused persons have been granted 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 anticipatory bail on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Exclusive Special Excise Court No.1st, Gaya in connection with Bodh Gaya P.S. Case No.499 of 2021, 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 absence on two consecutive dates without sufficient reason, his bail bonds shall be cancelled by the Court below.

(ii) If the petitioner tamper with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of anticipatory 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 criminal antecedents, the court below shall take step for cancellation of anticipatory 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)

Prakash Narayan

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