

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71242 of 2023

Arising Out of PS. Case No.-133 Year-2023 Thana- SAHIYARA District- Sitamarhi

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GUNJESH KUMAR @ GUNJESH SAH SON OF SATYANARAYAN SAH
RESIDENT OF VILLAGE- MADHUBANI, PS- SAHIYARA, DIST-
SITAMARHI

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Santosh Kumar, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-11-2023 Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Sahiyara P.S. Case No. 133 of 2023, F.I.R. dated 04.08.2023, registered for the offence punishable under Sections 30 (a) of the Bihar Prohibition and Excise (Amendment) Act.

3. There are recovery of 756 liters of Nepali Saufi wine.

4. Learned counsel for the petitioner submits that petitioner has clean antecedent and has been falsely implicated in the present case on the basis of secret information received by the Police. He further submits that from a bare perusal of the F.I.R., it appears that nothing has been recovered from the conscious possession or the house of the petitioner, rather recovery has been made from the Bolero vehicle and motorcycle in question and the



petitioner has no concern at all with the alleged recovery of illicit liquor or the Bolero vehicle and motorcycle in question and except the secret information received by the Police, no other cogent material has come during investigation against the petitioner 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 that nothing has recovered from the conscious possession or the house of the



petitioner and the name of the petitioner has been transpired on the basis of secret information received by the Police, the petitioner has clean antecedent, 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.-I, Sitamarhi in connection with Sahiyara P.S. Case No. 133 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 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)

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