

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70968 of 2023

Arising Out of PS. Case No.-463 Year-2023 Thana- MAHUA District- Vaishali

Rajeev Kumar @ Rajeev Kumar Ray S/O Mini Avadhesh Ray @ Avadhesh Kumar Ray R/O Village- Mahua Singh Ray, P.S- Mahua, Distt.- Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bijay Bhushan Prasad, Advocate

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

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-11-2023 Heard Mr. Bijay Bhushan Prasad, learned counsel for the petitioner as well as Mr. Sanjay Kumar Tiwary, learned Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Mahua P.S. Case No.463 of 2023, F.I.R. dated 15.07.2023 registered for the offence punishable under Sections 272, 273 and 34 of the Indian Penal Code and under Section 30(a) of the Bihar Prohibition and Excise (Amendment) Act.

3. Allegation is of recovery of 98.640 liter Indian made foreign liquor was recovered.

4. Learned counsel for the petitioner submits that petitioner has clean antecedent and has falsely been implicated in the present 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 grocery shop of the petitioner and the petitioner was not present at the time of the seizure and he has no concern at all with the alleged recovery of the liquor. 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, 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 Judge,II-cum-Additional District and Sessions Judge, Vaishali at Hajipur in connection with Mahua P.S. Case No.463 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)

Prakash Narayan

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