

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70452 of 2023

Arising Out of PS. Case No.-127 Year-2022 Thana- DUMARIYA District- Gaya

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Dhananjay Yadav @ Dhananjay Kumar @ Dhananjay Kumar Yadav Son Of
Late Sobhan Yadav @ Late Sohan Yadav R/O Village - Duwath @ Dubath,
P.S.- Dumariya, District- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Durgesh Nandan, Advocate

For the Opposite Party/s : Mr. Gauri Shankar Gupta, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 01-11-2023 Heard Mr. Durgesh Nandan, learned counsel for the

petitioner and Mr. Gauri Shankar Gupta, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Dumariya P.S. Case No. 127 of 2022 F.I.R.
dated 25.12.2022 registered for the offences punishable under
Section 30(a) of Bihar Prohibition and Excise (Amendment)
Act, 2018.

3. Recovery is of 15 litres of illicit *mahua* liquor
and 3500 litres of *jawa mahua*.

4. Learned counsel for the petitioner submits that
the petitioner has clean antecedent and has falsely been
implicated in the present case on the basis of information



furnished by the local *chaukidar*. He further submits that from perusal of the F.I.R. as well as seizure list it appears that nothing has been recovered from the conscious possession of the petitioner rather recovery has been made from the forest area and the petitioner has no concern at all with the alleged recovery of illicit 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, nothing has been



recovered from conscious possession of the petitioner and the petitioner having clean antecedent and the name of the petitioner has been transpired on the basis of disclosure made by local choukidar, 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 Exclusive Excise Judge No. 3, Gaya in connection with Dumariya PS. Case No. 127 of 2022, 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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