

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70437 of 2023

Arising Out of PS. Case No.-28 Year-2023 Thana- SIKTI District- Araria

Sahdeo Sharma @ Sahdev Sharma S/O Hulla Sharma @ Yogendra Sharma
Village- Saidabad, Ward No. 13, Ps. Sikty, Dist. Araria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ramesh Kumar Singh, Advocate

For the Opposite Party/s : Mr. Dr. Kumar Uday Pratap, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 01-11-2023

Heard Mr. Ramesh Kumar Singh, learned

counsel for the petitioner and Mr. Dr. Kumar Uday Pratap,
learned Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Sikty P.S. Case No. 28 of 2023, F.I.R dated 30.01.2023 registered for the offences punishable under Section 342, 353, 323, 324, 504 and 186 of the Indian Penal Code and Sections 30(a) and 45 of Bihar Prohibition and Excise Act, 2016.

3. Recovery is of 102 liters of Nepali liquor.

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 the disclosure made by the co-accused persons, Matkun @ Kashim and Ashish



Kumar. He further submits that it appears from the F.I.R that recovery has been made from the motorcycle in question and the co-accused persons were also apprehended along with the motorcycle and the illicit liquor. He further submits that except the disclosure made by the co-accused, no other material has come during investigation 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, nothing has been recovered from conscious possession of the petitioner and the petitioner has clean antecedent and the name of the petitioner has been transpired on the basis of the disclosure made by the co-accused persons, 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 the learned Exclusive Special Judge Excise-II, Araria in connection with Sikty P.S. Case No. 28 of 2023, 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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