

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70552 of 2023

Arising Out of PS. Case No.-207 Year-2023 Thana- BAJPATTI District- Sitamarhi

Saurabh Kumar @ Phudan Son Of Ramashankar Singh R/O Village- Rain Bishanpur (RAIN Bishnu), P.S.- Runnisaidpur, District- Sitamarhi At Present Village- Ratwara, P.S.- Bajpatti, District- Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Uday Kumar, Advocate

For the Opposite Party/s : Mr.Veena Kumari Jaiswal, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 01-11-2023 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 Bajpatti P.S. Case No.207 of 2023, F.I.R. dated 12.07.2023 registered for the offence punishable under Sections 30(a) of the Bihar Prohibition and Excise Amendment Act, 2018.

3. There has been recovery of 30 liters of Nepali Saufi liquor.

4. Learned counsel for the petitioner submits that petitioner has falsely been implicated in the present case on the basis of the disclosure made by a person namely, Deepak Kumar. He further submits that nothing has been recovered from conscious possession of the petitioner, rather recovery has been



made from the motorcycle in question and petitioner has no concern at all with the alleged recovery or the motorcycle in question or the co-accused person and except the disclosure of the co-accused person, no other cogent material has come during investigation to suggests 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. Learned APP for the State, on the other hand vehemently opposed the prayer for anticipatory bail of the petitioner stating that the petitioner has carries three cases other than the present one of the similar nature, but fairly submits that on the basis of the paragraph-3 of the petition that the petitioner is on bail in the pending cases. Further 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 been recovered from the conscious possession of the petitioner, name of petitioner has come disclosure made by co-accused person, 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 Special Judge Exclusive Excise Court No.2nd, Sitamarhi in connection with Bajpatti P.S. Case No.207 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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