

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.71248 of 2023**

Arising Out of PS. Case No.-121 Year-2023 Thana- KHANPURA District- Samastipur

AJAY KUMAR SON OF DASRATH MAHTO @ DASRATH SINGH  
RESIDENT OF VILLAGE - RAINI, POLICE STATION - KHANPUR,  
DISTRICT - SAMASTIPUR

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr.Mahendra Pratap, Adv.  
For the Opposite Party/s : Mr.Shailendra Kumar, APP

**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 Khanpura P.S. Case No. 121 of 2023, F.I.R. dated 13.05.2023, registered for the offence punishable under Sections 30 (a) of the Bihar Prohibition and Excise (Amendment) Act.

3. There are recovery of 9 liters foreign liquors.

4. Learned counsel for the petitioner submits that petitioner has been falsely implicated in the present case on the basis of disclosure made by the co-accused namely Suresh Kumar and from his possession 9 liters foreign liquors has been recovered and he disclosed that he has received the liquor from the petitioner. He further submits that from a bare perusal of the F.I.R., it appears that nothing has been recovered from the conscious



possession of the petitioner, rather recovery has been made from the possession of co-accused namely Suresh Kumar and the petitioner has no concern at all with the alleged recovery of illicit liquor and except the disclosure made by the co-accused namely Suresh Kumar, 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. He further submits that the petitioner carries one more case of similar nature other than the present one but fairly submits on the basis of paragraph-3 of the petition that the petitioner is on bail in that case.

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 fact that nothing has recovered from the conscious possession of the petitioner and the name of the petitioner has been transpired on the basis of disclosure made by the co-accused namely Suresh Kumar, 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 Excise-1, Samastipur in connection with Khanpura P.S. Case No. 121 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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