

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70737 of 2023

Arising Out of PS. Case No.-493 Year-2022 Thana- SAHARSA SADAR District- Saharsa

MD. NOOR @ MD. NOOR ALAM son of Late Md. Yusuf @ Tin Kauri
Village- Niyamat Tola W. NO-15, Ps- Saharsa Sadar Dist- Saharsa

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Binod Kumar Sinha, Advocate

For the Opposite Party/s : Mr.Suresh Prasad Singh,APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-11-2023 Heard Mr.Binod Kumar Sinha, learned counsel for
the petitioner and Mr.Suresh Prasad Singh,learned Additional
Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Saharsa Sadar P.S.Case No.493 of 2022, FIR dated 15.07.2022 registered for the offences punishable under Sections 30(a) ,41 of Bihar Prohibition and Excise Act, 2022.

3. Recovery is of 13.140 liters of foreign liquor.

4. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the present case. The allegation as alleged in the FIR is false and fabricated and the petitioner has not committed any offence as alleged in the FIR. Further submits that from a bare perusal of the FIR as well as the seizure list that nothing has been recovered from conscious



possession of the petitioner rather the recovery has been made from the house of the petitioner and the petitioner was not present at the time of the recovery and the copy of the seizure list had not been handed over to the family members of the petitioner. 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 petitioners under the Bihar Prohibition and Excise Act.

5. Learned A.P.P. for the State has vehemently opposed the prayer for 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. Further submits that the recovery has been made from the house of the petitioner and apart from the aforesaid, the petitioner carries two more cases other than the present one but fairly submits that the petitioner is on bail in both the cases, as mentioned in para-3 of the bail petition.

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) PLJR 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 and nothing has been recovered from 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 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 Special Judge (Excise), Saharsa in connection with Saharsa Sadar P.S.Case No.493 of 2022, 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/her absence on two consecutive dates without sufficient reason, his/her bail bond shall be cancelled by the Court below.

(II) 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.

(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/her 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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