

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.73994 of 2023**

Arising Out of PS. Case No.-716 Year-2023 Thana- Excise P.S. District- Lakhisarai

Nitish Kumar S/O Uchit Verma Village- Jay Nagar, Lali Pahari, Ward No. 33,  
Ps. Lakhisarai, Dist. Lakhisarai

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

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

For the Opposite Party/s : Mr. Akbar Ali, APP

**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**  
**ORAL ORDER**

2      09-11-2023                      Heard Mr. Sanjeev Kumar, learned counsel for  
the petitioner and Mr. Akbar Ali, learned Additional Public  
Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Excise P.S. Case No. 716 C2 of 2023, F.I.R dated 19.08.2023 registered for the offences punishable under Sections 30(a), 56(2)(ii) of Bihar Prohibition and Excise Act.

3. Recovery is of 135 liters of country made liquor.

4. Learned counsel for the petitioner submits that the petitioner has clean antecedent and he has falsely been implicated in the present case merely on the ground that the petitioner is the owner of the Mahindra Pick-up Van from which the illicit liquor has been recovered. He further submits that in fact, the petitioner has sold the aforesaid vehicle in question to



one Dhanraj Kumar on 16.08.2023 and thereafter the present F.I.R has been instituted on 19.08.2023. He further submits that the petitioner has no concern at all with the vehicle in question and on the date of the occurrence the owner is Dhanraj Kumar and it appears that nothing has been recovered from the conscious possession 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 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, 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 Additional District & Sessions Judge V-cum-Exclusive Special Excise Court-II, Lakhisarai in connection with Excise P.S. Case No. 716 C2 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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