

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73888 of 2023

Arising Out of PS. Case No.-120 Year-2021 Thana- CHHAURADANO District- East
Champaran

BIKASH KUMAR S/O UPENDRA RAI @ UPENDRA PRASAD R/O
VILLAGE- TIKULIYA, P.S- ADAPUR, DISTT.- EAST CHAMPARAN.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Advocate
For the Opposite Party/s : Mrs. Pronoti Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 09-11-2023 Heard Mr. Ajay Kumar Singh, learned counsel for
the petitioner and Mrs. Pronoti Singh, learned Additional Public
Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Chhauradano (Mahuawa) P.S. Case No. 120 of
2021 F.I.R. dated 21.05.2021 registered for the offences
punishable under Sections 30(a), 32, 41(i) of Bihar Prohibition
and Excise Amendment Act, 2018.

3. Recovery is of 135 litres of country made Nepali
liquor.

4. Learned counsel for the petitioner submits that
the petitioner is innocent and has falsely been implicated in the
present case on the basis of disclosure made by co-accused



person namely Chhotu Kumar and he also disclosed that the petitioner and other co-accused was accompanied with Chhotu Kumar and they have managed to flee away from the place of occurrence. He further submits that nothing has been recovered from the conscious possession of the petitioner and except the disclosure made by co-accused person, 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. He further submits that the petitioner carries two more cases other than the present one but fairly submits that the petitioner is on bail in both the pending cases.

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 name of the petitioner has been transpired on the basis of 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 bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, Excise Court No. 2, East Champaran at Motihari in connection with Chhauradano (Mahuawa) PS. Case No. 120 of 2021, 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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