

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73725 of 2023

Arising Out of PS. Case No.-561 Year-2023 Thana- DARBHANGA SADAR District-
Darbhanga

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Sunny Mahto S/O Late Manju Mahto R/O Vill - Ganj Bajitpur, P.S. -
Bahadurpur, Dist – Darbhanga.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nilendu Kumar Choudhary, Advocate

For the Opposite Party/s : Mr. Raj Ballabh Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 09-11-2023 Heard Mr. Nilendu Kumar Choudhary, learned
counsel for the petitioner as well as Mr. Raj Ballabh Singh,
learned Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Sadar P.S. Case No.561 of 2023, F.I.R. dated
12.08.2023 registered for the offence punishable under Sections
420, 467, 468 and Section 34 of the Indian Penal Code and
Section 30(a) of the Bihar Prohibition and excise (Amendment
Act), 2018.

3. Allegation against the petitioner is of recovery of
824.115 liters of foreign liquor were recovered.

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 the co-accused persons, namely,



Gulab Kumar and Ravi Kumar. He further submits that nothing has been recovered from the conscious possession of the petitioner, and except the disclosure made by the co-accused persons no other cogent material has come during investigation to suggests the involvement of the petitioner in the present occurrence. Further submits that recovery has been made from the pickup van in question and the petitioner has no concern at all with the alleged recovery or the pick-up van in question. 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. Further submits that petitioner carries two criminal antecedents other than the present one, but fairly submits that 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, 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 Exclusive Special Judge,I (Excise Act), Darbhanga in connection with Sadar P.S. Case No.561 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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