

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75795 of 2023

Arising Out of PS. Case No.-703 Year-2023 Thana- Excise P.S. District- Aurangabad

Kundan Singh @ Kundan Kumar Singh S/O Kameshwar Singh Village-
Kunda, Ps. Aurangabad Muffasil, Dist. Aurangabad

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Nitu Kumari, Advocate

For the Opposite Party/s : Mr. Md. Nazir Ansari, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 29-11-2023 Heard Ms. Nitu Kumari, learned counsel for the

petitioner and Mr. Md. Nazir Ansari, learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Aurangabad Excise (Sadar) P.S. Case No. 703 of 2023, F.I.R dated 06.09.2023 registered for the offences punishable under Section 30(a) and 32(3) of Bihar Prohibition and Excise Act.

3. Recovery is of 141.615 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. She further submits that it appears from the F.I.R that nothing has been recovered from the



conscious possession of the petitioner rather the recovery has been made from the vehicle in question and the petitioner is neither the owner nor the driver of the said vehicle in question. She further submits that the name of the petitioner has been transpired on the basis of the disclosure made by the co-accused, namely, Prince Kumar Singh. She further submits that except the disclosure made by the co-accused, 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.

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 the disclosure made by the co-accused, 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 Special Judge Excise-II(Second), Aurangabad (Bihar) in connection with Aurangabad Excise (Sadar) P.S. Case No. 703 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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