IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75747 of 2023

Arising Out of PS. Case No.-427 Year-2023 Thana- CHANDAUTI District-Gaya

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HARI CHAUDHARY @ HARI KUMAR SON OF CHHOTU CHAUDHARY VILLAGE MADAN BIGHA PS CHAKAND DISTRICT GAYA

... ... Petitioner/s

Versus

The State of Bihar BIHAR

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Shailesh Kumar
For the Opposite Party/s : Mr.Ahmad Ali

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL ORDER

2 29-11-2023 Heard Mr. Shailesh Kumar, learned counsel for the petitioner and Mr. Ahmad Ali, learned A.P.P. for the State.

The petitioner apprehends his arrest in connection with Chandauti P.S. Case No. 427 of 2023 registered for the offence under Section 30(a) of the Bihar Prohibition and Excise Act.

Recovery is of 25 liters of country made Mahua.

Learned counsel appearing for the petitioner submits that the petitioner, who is of clean antecedent, is innocent and has falsely been implicated in this case. He further submits that on bare perusal of the F.I.R. and the seizure list, it appears that nothing has been recovered from the house or conscious possession of the petitioner rather

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the alleged recovery has been made from the motorcycle. He further submits that the name of the petitioner surfaced on the basis of disclosure made by the co-accused, Dharmendra Chaudhary, who was apprehended by the police from the spot. Save and except the disclosure of the co-accused, no cogent material has surfaced during course of investigation suggesting the involvement of the petitioner in the alleged occurrence. He further submits that there is non-compliance of Section 100 Cr.P.C. while preparing the seizure list, therefore, no case would be made out against the petitioner under the Bihar Prohibition and Excise Act.

Learned A.P.P. for the State has vehemently opposed the prayer for grant of anticipatory bail to the petitioner referring to the provisions contained in Section 76(2) of the Bihar Prohibition and Excise Act and submits that this application seeking pre-arrest bail would not be maintainable.

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

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purpose of grant of anticipatory bail, is inclined to accept the submission of counsel for the petitioner.

Considering the facts and circumstances of the case and the fact that nothing incriminating has been recovered from the possession of the petitioner and he has been made accused in this case on the basis of disclosure of the co-accused and the petitioner is having no criminal antecedent, let the, above named, petitioner, in the event of his arrest or surrender before the court below within a period of four weeks, 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 Excise Judge, Court No.4, Gaya in connection with Chandauti P.S. Case No. 427 of 2023, subject to the conditions laid down under Section 438(2) of the Cr.P.C. as also with the 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/her absence on two consecutive dates without sufficient reason, his/her bail bond shall be canceled by the Court below.

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(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.

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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