

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79419 of 2023**

Arising Out of PS. Case No.-222 Year-2023 Thana- BEGUSARAI MUFFASIL District-
Begusarai

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RAHUL KUMAR Son of Dilip Mahton @ Dilip Mahto @ Dilip Mahato @
Dileep Mahto Resident of village - Ulao (Ullao), Ward No.- 03, P.S.-
Muffasil, District - Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sandip Kumar Gautam, Advocate

For the Opposite Party/s : Mr.Vinod Shanker Modi, APP

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

2 08-12-2023 Heard Mr.Sandip Kumar Gautam, learned counsel for

the petitioner and Mr.Vinod Shanker Modi, learned Additional

Public Prosecutor for the State.

2. Earlier the anticipatory bail petition of the
petitioner has been dismissed as withdrawn vide order dated
12.10.2023 passed in Cr. Misc. No. 61286 of 2023.

3. The petitioner is apprehending his arrest in
connection with Muffasil P.S.Case No.222 of 2023, FIR dated
16.04.2023 registered for the offences punishable under Section
30(a) of Bihar Prohibition and Excise Act, 2018.

4. Recovery is of 9 liters of foreign liquor.

5. Learned counsel for the petitioner submits that the
petitioner has falsely been implicated in the present case. The



allegation as alleged in the FIR is false and fabricated and from a bare perusal of the FIR as well as the seizure list it appears that nothing has been recovered from conscious possession or the house of the petitioner rather the recovery has been made from the house of co-accused, namely, Laddu Kumar and on the basis of the disclosure made by the co-villager, the name of the petitioner has been transpired 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 petitioners under the Bihar Prohibition and Excise Act.

6. Learned A.P.P. for the State has vehemently opposed the prayer for 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 the petitioner two more cases of the similar nature other than the present one but fairly submits that the petitioner is on bail on both the cases, as mentioned in para-3 of the bail petition.

7. 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) PLJR 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.

8. 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 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-I, Begusarai in connection with Muffasil P.S. Case No.222 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/her absence on two consecutive dates without sufficient reason, his/her bail bond shall be cancelled by the Court below.

(II) 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.



(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/her 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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