

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7522 of 2024

Arising Out of PS. Case No.-64 Year-2023 Thana- Excise P.S. District- Siwan

Rajan Mahato @ Rajan Kumar Son Of Kishori Mahato @ Kishor Mahato @
Kishor Chauhan Resident Of Village- Ukhai Poorab Patti (UKHAI Khariyar,
Ward No. 7), Ps- Saray Op, Dist- Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shambhu Prasad Yadav, Advocate
For the State : Mr. Yogendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 21-03-2024 Heard Mr. Shambhu Prasad Yadav, learned counsel
for the petitioner and Mr. Yogendra Kumar, learned Additional
Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Siwan Excise P.S. Case No. 64 of 2023, F.I.R. dated 18.01.2023 for the offences punishable under Sections 30(a) of Bihar Prohibition and Excise Act.

3. Recovery is of 30 liters of illegal liquor.

4. Learned counsel for the petitioner submits that the petitioner is innocent and he has falsely been implicated in the present case. He further submits that the allegation as alleged in the F.I.R is false and fabricated. He further submits that it appears from the F.I.R as well as seizure list that nothing has been recovered from the conscious possession of the petitioner



rather the recovery has been made from the construction hut of the petitioner and the petitioner was not present at the time of recovery and he has no concern at all with the recovery of the seized liquor. 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 for the State, on the other hand, has vehemently opposed the prayer for anticipatory bail of the petitioner and submits that it appears from the F.I.R as well as seizure list that the recovery has been from the hut of the petitioner apart from that petitioner carries two criminal antecedents other than the present one on the similar nature but fairly submits that the petitioner is on bail in both the pending matters. He has referred 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, 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 Exclusive Special Judge Excise, Court No.-II, Siwan in connection with Siwan Excise P.S. Case No. 64 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 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 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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