

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15523 of 2024

Arising Out of PS. Case No.-783 Year-2023 Thana- LAKHISARAI District- Lakhisarai

Sisma Devi Wife of Late Tuntun Chaudhary, Resident of Village- Bilauri,
P.S.- Lakhisarai, District- Lakhisarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Umesh Prasad, Advocate

For the Opposite Party/s : Mr. Ahmad Ali, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 18-04-2024 Heard Mr. Umesh Prasad, the learned counsel for

the petitioner and Mr. Ahmad Ali, the learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest in

connection with Lakhisarai PS Case No. 783 of 2023, FIR dated

08.10.2023, registered for the offence punishable under

Sections 30(a) and 32(3) of the Bihar Prohibition and Excise

Act.

3. Recovery is of 15 litres of country made liquor.

4. Learned counsel for the petitioner submits that

petitioner has falsely been implicated in the present case and

upon perusal of the FIR and seizure list, it appears that nothing

has been recovered from the conscious possession of the

petitioner, rather the recovery has been made from the house of



the petitioner and the petitioner is not the absolute owner of the house in question and the alleged house is a joint family property. 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. He further submits that it appears from the FIR that the recovery has been made from the house of the petitioner and apart from that, the petitioner has one criminal antecedent other than the present one, however, he fairly admits that the petitioner is on bail in the pending matter.

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 and circumstances and the fact that 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 trial Court 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/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional District Judge-IV-cum-Exclusive Excise Court-1st, Lakhisarai, where the case is pending in connection with **Lakhisarai PS Case No. 783 of 2023**, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. and also the following conditions:-

(i). Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the trial Court and shall remain physically present as directed by the trial Court and on his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the trial Court.

(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 trial Court 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 trial Court 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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