

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No. 15373 of 2024**

Arising Out of PS. Case No.-227 Year-2023 Thana- VISHAMBHARPUR District- Gopalganj

Rajeshwar @ Rajkeshwar @ Rajkeshwar Chauhan Son Of Fagu R/O Village-  
Noniya Patti, P.S.- Tareya Sujan, District- Kushinagar (UTTAR Pradesh)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Umesh Singh, Adv.

For the Opposite Party/s : Mr. Rajesh Kumar, APP

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

3      16-04-2024                      Heard learned counsel for the petitioner and learned  
A.P.P. for the State.

2.      The petitioner is apprehending his arrest in connection with Vishambharpur P.S. Case No. 227 of 2023, F.I.R. dated 17.11.2023, registered for the offences punishable under Section 30(a) of the Bihar Prohibition and Excise Amendment Act, 2022.

3. Recovery is of 21.200 litre country made wine.

4. Learned counsel for the petitioner submits that the petitioner has clean antecedent and he has falsely been implicated in the present case only on the ground that he is the owner of the motorcycle in question. He further submits that in fact, the motorcycle of the petitioner was stolen from his house and the petitioner has given application about the same before

Bahadurpur Chauki, U.P. and it appears that the local *chaukidar* also disclosed the name of the petitioner. 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 A.P.P. for the State has vehemently opposed the prayer for anticipatory bail of the petitioner and submits that the recovery has been made from the motorcycle in question and the petitioner is owner of the motorcycle, apart from that the local *chaukidar* also disclosed the name of the petitioner. He is 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 and circumstances

and the fact that nothing has been recovered from conscious possession of the petitioner and the petitioner has clean antecedent, 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 & Sessions Judge-IVth-cum-Exclusive Special Excise, Court No. II, Gopalganj, where the case is pending in connection with Vishambharpur, P.S. Case No. 227 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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