

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16077 of 2024

Arising Out of PS. Case No.-577 Year-2023 Thana- SAHEBGANJ District- Muzaffarpur

Vivek Kumar Patel @ Vivek Kumar S/O- Brajkishore Patel @ Brajkishor Prasad, R/O- Village- Neelkanth Karnaul, P.S.- Sahebganj, Dist.- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ranjeet Patel, Advocate
For the Opposite Party/s : Dr. Ajeet Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 16-04-2024 Heard Mr. Ranjeet Patel, the learned counsel for the petitioner and Dr. Ajeet Kumar, the learned Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Sahebganj PS Case No. 577 of 2023, FIR dated 28.12.2023, registered for the offences punishable under Sections 272 and 273 read with Section 34 of the Indian Penal Code and under Section 30(a) of the Bihar Prohibition and Excise Act.

3. Recovery is of 155.520 litres of foreign liquor.

4. Learned counsel for the petitioner submits that petitioner has clean antecedent and he has falsely been implicated in the present case. He further submits that upon perusal of the FIR, it appears that nothing has been recovered



from the conscious possession of the petitioner, rather the recovery has been made from the poultry farm and petitioner was not present at the place of 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 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.

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 Exclusive Special Judge, Excise Court No.-II, Muzaffarpur, where the case is pending in connection with **Sahebganj PS Case No. 577 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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