

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16943 of 2024

Arising Out of PS. Case No.-285 Year-2023 Thana- AMNAUR District- Saran

Rupesh Kumar @ Rupesh Manjhi Son Of Late Ravan Manjhi Resident Of
Village- Amnour Hata, Ps- Amnour, Distt- Saran At Present Resident Of
Village- Dharampur Jafar, Ps- Amnour, Distt- Saran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Jha, Advocate
For the State : Mr. Jai Narain Thakur, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 18-04-2024 Heard Mr. Sanjay Kumar Jha, learned counsel for
the petitioner and Mr. Jai Narain Thakur, learned Additional
Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Amnour P.S. Case No. 285 of 2023, F.I.R. dated
18.11.2023 for the offences punishable under Sections 30(a) of
the Bihar Prohibition and Excise Act.

3. Recovery is of 175 liters of country made mahua
liquor.

4. Learned counsel for the petitioner submits that the
petitioner has clean antecedent and 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 that nothing has been recovered from the conscious possession of the petitioner rather the recovery has been made from the open roof of the house of the petitioner. He further submits that the petitioner is not the absolute owner of the house in question and the petitioner has no concern at all with the alleged recovered 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 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 the petitioner carries one criminal antecedent other than the present one but fairly submits on the basis of the paragraph-3 of the bail petition 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, 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 1st Exclusive Special Excise Court, Saran at Chhapra in connection with Amnour P.S. Case No. 285 of 2023, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other following conditions:-

1. 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.

2. 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.

3. 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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