

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22105 of 2024

Arising Out of PS. Case No.-169 Year-2022 Thana- BAHADURPUR District- Darbhanga

Raj Kishore Yadav S/o Deo Narayan Yadav @ Devnarayan Yadav Resident
Of Village Atahar (Daing) Police Station Baheri District Darbhanga

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Nilendu Kumar Choudhary, Advocate

For the Opposite Party/s : Mr. Rajendra Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 20-03-2024 Heard Mr. Nilendu Kumar Choudhary, learned
counsel for the petitioner and Mr. Rajendra Singh, learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Bahadurpur (Pator O.P.) P.S. Case No. 169 of 2022 F.I.R. dated 26.04.2022 registered for the offences punishable under Sections 420, 467, 468, 471, 414, 120(B) of the Indian Penal Code and Sections 30(a), 32(ii)(iii), 36, 41(i) of Bihar Prohibition and Excise Act.

3. Recovery is of 3457.44 litres of *foreign* liquor.

4. Learned counsel for the petitioner submits that the petitioner has clean antecedent and he has falsely been implicated in the present case on the basis of the confessional statement of co-accused person. He further submits that from



perusal of the F.I.R. as well as seizure list it appears that nothing has been recovered from the conscious possession of the petitioner rather recovery has been made from the Truck and Wagon-R in question. He further submits that petitioner is neither the owner nor the driver of the vehicles in question and similarly situated co-accused person namely Vishwamohan Yadav has been granted the privilege of anticipatory bail by this Court vide order dated 22.11.2022 passed in Cr. Misc. Nio. 54940 of 2022. 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 that nothing has been recovered from conscious possession of the petitioner and the petitioner having clean antecedent and the name of the petitioner has been transpired on the basis of confessional statement of co-accused person and similarly situated co-accused person has been granted the privilege of anticipatory bail, 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 learned Exclusive Special Excise Court No. 01, Darbhanga in connection with Bahadurpur (Pator O.P.) PS. Case No. 169 of 2022, 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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