

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22781 of 2024

Arising Out of PS. Case No.-74 Year-2024 Thana- BAKHTIYARPUR District- Patna

Om Prakash @ Om Prakash Kumar @ Tullu Son Of Janardan Prasad @
Bhola Prasad Resident Of Village- Bhuapur, Ps- Bakhtiyarpur, Dist- Patna
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar Pandey, Advocate
For the State : Mr. Mohammed Arif, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 18-04-2024 Heard Mr. Manoj Kumar Pandey, learned counsel for
the petitioner and Mr. Mohammed Arif, learned Additional Public
Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Bakhtiyarpur P.S. Case No. 74 of 2024, F.I.R.
dated 11.02.2024 for the offences punishable under Sections 30(a)
of Bihar Prohibition and Excise Act.

3. Recovery is of 141.800 liters of foreign 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 as well as seizure list that nothing has been
recovered from the conscious possession of the petitioner rather
the recovery has been made from the old house of the petitioner.



He further submits that no family member of the petitioner resides in the house. 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, 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 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 Special Excise Judge, Barh, Patna in connection with Bakhtiyarpur P.S. Case No. 74 of 2024, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other following conditions:-

i. 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.

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 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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