

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28203 of 2024

Arising Out of PS. Case No.-285 Year-2022 Thana- GAURICHAK District- Patna

Kuta Dulari Paswan @ Kutta Dulari Paswan D/O Lakshmi Paswan @ Laxmi
Paswan R/O Village- Jaitiya, P.S- Gaurichak, Distt.- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Madhukar Anand, Advocate

For the Opposite Party/s : Mr. Gauri Shankar Gupta, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 10-04-2024 Heard Mr. Madhukar Anand, learned counsel for the

petitioner and Mr. Gauri Shankar Gupta, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Gaurichak P.S. Case No. 285 of 2022, F.I.R
dated 11.05.2022 registered for the offences punishable under
Section 30(a) of Bihar Prohibition and Excise Act.

3. Recovery is of 50 liters of 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 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 public place. He further



submits that the name of the petitioner has been transpired on the basis of the secret information but it appears from the F.I.R that the informant has not disclosed the source of secret information and apart from that the co-accused, namely, Shravan Paswan has been granted anticipatory bail by this Hon'ble Court vide order dated 21.11.2022 passed in Cr. Misc. No. 51612 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, nothing has been recovered from conscious possession of the petitioner, name of the petitioner has been transpired on the basis of secret information, co-accused person has been granted anticipatory bail by this Hon'ble Court 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 Exclusive Special Court of Excise, Patna City in connection with Gaurichak P.S. Case No. 285 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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