

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31498 of 2024

Arising Out of PS. Case No.-192 Year-2023 Thana- BALIYA District- Begusarai

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Samar Kumar Ghosh @ Samar Ghosh Son of Sukumar Ghosh Resident of
village - Islampur Ramkrishnapuri, P.O. and P.S.- Islampur, District - Uttar
Dinajpur, West Bengal.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Santosh Kumar, Advocate
For the State : Ms. Asha Devi, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 12-07-2024 Heard Mr. Santosh Kumar, learned counsel for

the petitioner and Ms. Asha Devi, learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Ballia P.S. Case No. 192 of 2023, F.I.R dated
19.07.2023 registered for the offences punishable under
Sections 290 and 120(b) of the Indian Penal Code and Sections
30(a), 32, 41(1)(2) of Bihar Prohibition and Excise Act.

3. Recovery is of 1791 liters of foreign liquor.

4. Learned counsel for the petitioner submits that
the petitioner is innocent and he has falsely been implicated in
the present case merely on the basis of the disclosure made by
the co-accused person, namely, Bimlesh Kumar. He further



submits that as per the allegation in the FIR Bimlesh Kumar disclosed that the petitioner had sent him to deliver the liquor in Bihar. He further submits that the allegation as alleged in the F.I.R is false and fabricated and the petitioner has not committed any offence as alleged in the FIR. 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 truck in question. He further submits that petitioner is neither the owner nor the driver of the truck in question and he has no concern at all with the illicit liquor or the truck in question. 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 submits that the pre-arrest bail would not be maintainable. He further submits that the petitioner is named in the FIR apart from that he carries eight cases of the similar nature of the offences but fairly submits that the petitioner is on bail in all the pending matters.



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, 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 Excise Court No.II, Begusarai in connection with Ballia P.S. Case No. 192 of 2023, 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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