

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34500 of 2024

Arising Out of PS. Case No.-109 Year-2023 Thana- AAYAR District- Bhojpur

Kanhaiya Yadav @ Kanhaiya Kumar Son of Indal Yadav @ Indal Singh
Resident of Village - Chirapur, Police Station - Aayar, District - Bhojpur At
Ara

... .. Petitioner/S

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shashank Shekhar, Advocate

For the Opposite Party/s : Mr. Kumar Ranjit Ranjan, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 09-08-2024 Heard Mr. Shashank Shekhar, learned counsel for the

petitioner and Mr. Kumar Ranjit Ranjan, learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection
with Aayar P.S. Case No. 109 of 2023, F.I.R dated 28.07.2023
registered for the offences punishable under Section 30(a) of Bihar
Prohibition and Excise (Amendment) Act, 2022.

3. Recovery is of 80 liters of country made Mahuwa
liquor.

4. Learned counsel for the petitioner submits that the
petitioner has clean antecedent and he has falsely been implicated
in the present case. He further submits that from the perusal of the
F.I.R and seizure list, it appears that nothing has been recovered
from the conscious possession of the petitioner rather the recovery



has been made from the motorcycle in question. He further submits that the name of the petitioner has transpired during investigation on the basis of the disclosure made by the co-accused person, namely, Raja Kumar. He further submits that except the disclosure made by the co-accused person, no other cogent material has come during the investigation which suggest the involvement of the petitioner in the present case. 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. Apart from that the petitioner carries one case of similar nature other than the present one but fairly submits on the basis of supplementary affidavit filed on behalf of the petitioner 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 and circumstances, 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 court of Exclusive Special Excise Court No. 1st, Bhojpur, Ara in connection with Aayar P.S. Case No. 109 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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