

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34731 of 2024

Arising Out of PS. Case No.-237 Year-2023 Thana- BAHERA District- Darbhanga

Chandra Bhushan Yadav @ Jhagru Yadav Son Of Rajendra Yadav Resident
Of Village - Vasudevpur, Police Station - Sonki, District- Darbhanga

... .. Petitioner/s

Versus

The State of Bihar Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Nilendu Kumar Choudhary, Advocate
For the State : Mr. Dashrath Mehta, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 19-07-2024 Heard Mr. Nilendu Kumar Choudhary, learned
counsel for the petitioner and Mr. Dashrath Mehta, learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Bahera P.S. Case No. 237 of 2023, F.I.R. dated 30.05.2023 for the offences punishable under Sections 420 and 34 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

3. Recovery is of 3155.40 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 on the basis of the information furnished by the local *chaukidar*. He further submits that from a bare perusal of the FIR it appears that nothing has been recovered from the



conscious possession of the petitioner rather recovery have been made from the container. He further submits that petitioner is neither the owner nor the driver of the said container and he has no concern at all with the alleged recovery. He further submits that co-accused person, namely, Yogesh Chaudhary @ Babu Saheb Chaudhary @ Babu Chaudhary has already been granted bail by a co-ordinate Bench of this Court vide order dated 11.08.2023 passed in Cr. Misc. No. 47702 of 2023 and other co-accused person, namely, Deepak Kumar has also been granted bail by a co-ordinate Bench of this Court vide order dated 11.08.2023 passed in Cr. Misc. No. 47124 of 2023. 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. Learned Additional Public Prosecutor for the State, on the other hand, 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. He further submits that petitioner carries four cases other than the present one but fairly submits on the basis



of the para-3 of the bail petition that the petitioner is on bail in 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, nothing has been recovered from conscious possession of the petitioner, 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 Judge-II (Excise Act), Darbhanga in connection with Bahera P.S. Case No. 237 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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