

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38034 of 2024

Arising Out of PS. Case No.-515 Year-2023 Thana- Excise P.S. District- Aurangabad

Dharamdev Kumar @ Dharmdev Kumar Son of Baleshwar Yadav R/o village
- Kathiya, P.S.- Obra, District - Aurangabad

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Singh, Advocate

For the Opposite Party/s : Mr. Yogendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 26-06-2024 Heard Mr. Ashok Singh, learned counsel for the

petitioner and Mr. Yogendra Kumar Singh, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Excise P.S. Case No. 515 of 2023, F.I.R dated 23.06.2023 registered for the offences punishable under Sections 30(a), 32(1), 32(2), 32(3), 41(1) and 41(2) of Bihar Prohibition and Excise Amendment Act, 2018/22.

3. Recovery is of 1.800 liters of country made 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 that altogether 1.800 liters of country made liquor



has been recovered from the motorcycle in question. He further submits that the petitioner has been made accused in this case only on the ground that he is the owner of the motorcycle in question. He further submits that the petitioner is a Government employee and he has no concern at all with the alleged recovery of illicit liquor. He further submits that it appears from the F.I.R itself that two accused persons namely Saudagar Kumar and Upendra Kumar Singh were caught along with the liquor and motorcycle of the petitioner. 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 and circumstances that nothing has been recovered from conscious possession of the petitioner, he has been made accused only on the ground that he is the owner of the motorcycle in question 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 Judge, Excise 2, Aurangabad in connection with Excise P.S. Case No. 515 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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