

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39153 of 2024

Arising Out of PS. Case No.-411 Year-2023 Thana- FATEHPUR District- Gaya

Vijay Manjhi S/O Late Barho Manjhi R/O Village- Machrak, P.S.- Fatehpur,
District- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vinod Kumar, Advocate

For the Opposite Party/s : Mr. Suresh Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 19-07-2024 Heard Mr. Vinod Kumar, learned counsel for the

petitioner and Mr. Suresh Prasad Singh, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Fatehpur P.S. Case No. 411 of 2023, F.I.R dated
10.06.2023 registered for the offences punishable under Section
30(a) of Bihar Prohibition and Excise Amendment Act, 2022.

3. Recovery is of 100 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 the
allegation as alleged in the F.I.R. is false and fabricated and the
petitioner has not committed any offences as alleged in the
F.I.R. 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 the motorcycle in question and the said motorcycle does not belong to the petitioner. He further submits that the name of the petitioner has been transpired during investigation on the basis of the confessional statement of the co-accused, namely, Sunny Kumar and except the aforesaid no other material has come during investigation which suggest the involvement of the petitioner in the present occurrence. He further submits that the petitioner has no concern at all with the alleged recovery of illicit liquor or the co-accused person. He further submits that the similarly situated co-accused, namely, Vijay Yadav @ Vijay Kumar has been granted anticipatory bail by a Co-ordinate Bench of this Court vide order dated 21.03.2024 passed in Cr. Misc. No. 19097 of 2024. 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 and the fact that the petitioner has clean antecedent, nothing has been recovered from conscious possession of the petitioner and the name of the petitioner has been transpired on the basis of the confessional statement of the co-accused person, 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 Excise-IV, Gaya in connection with Fatehpur P.S. Case No. 411 of 2023, 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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