

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38407 of 2024

Arising Out of PS. Case No.-65 Year-2024 Thana- RAHIKA District- Madhubani

Raushan Kumar Das Son Of Ram Ekbal Das R/O- Vill - Mahadevpatti, Ward
No.13, P.S- Harlakhi, Dist- Madhubani

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Jha, Advocate
For the State : Mr. Khurshid Anwar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 26-06-2024 Heard Mr. Sanjay Kumar Jha, learned counsel
for the petitioner and Mr. Khurshid Anwar, learned Additional
Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Rahika P.S. Case No. 65 of 2024, F.I.R dated 27.03.2024 registered for the offences punishable under Sections 272 and 273 of the Indian Penal Code and Section 30(a) of Bihar Prohibition and Excise Act.

3. Recovery is of 16.800 liters of Nepali country made liquor from a motorcycle.

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. 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 a motorcycle in question. He further submits that petitioner was not apprehended on the spot and the petitioner has been made accused in this case merely because he is owner of the motorcycle in question. He further submits neighbour of the petitioner has borrowed the motorcycle in question for going to see his ailing relative in Madhubani. 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, nothing has been recovered from conscious possession of the petitioner 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 Additional Sessions Judge-II-cum-Special Judge Excise Act, Madhubani in connection with Rahika P.S. Case No. 65 of 2024, 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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