

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38322 of 2024

Arising Out of PS. Case No.-274 Year-2024 Thana- SONEPUR District- Saran

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Kundan Kumar @ K.D S/O Gama Rai VILLAGE SABALPUR HASTI
TOLA, P.O. - CHAHARAM, P.S. - SONPUR, DISTRICT SARAN

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ganesh Prasad Singh, Advocate
For the State : Mr. Parmanand Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 26-06-2024 Heard Mr. Ganesh Prasad Singh, learned counsel

for the petitioner and Mr. Parmanand Prasad, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Sonpur P.S. Case No. 274 of 2024, F.I.R dated
30.03.2024 registered for the offences punishable under Section
30(a) of Bihar Prohibition and Excise Act.

3. Recovery is of 549.36 liters of IMFL liquor from
a pickup van.

4. Learned counsel for the petitioner submits that
the petitioner is innocent and he 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 the pickup van in question. He further submits that the petitioner is neither the owner nor the driver of the pickup van in question and he is no concern at all with the alleged recovery of liquor. He further submits that except the suspicion no other material has come during the investigation to 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. 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. He further submits that as per the allegation in the FIR the petitioner has brought the illicit liquor from the pickup van apart from that the petitioner carries one criminal antecedent other than the present one but fairly submits on the basis of the paragraph-3 of the bail application 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, nothing has been recovered from conscious possession of the petitioner and merely on the basis of the suspicion he has been made accused in this case, 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 Court No.02, Saran at Chapra in connection with Sonpur P.S. Case No. 274 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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