

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38128 of 2024

Arising Out of PS. Case No.-94 Year-2024 Thana- PAHARPUR District- East Champaran

Lalbabu Sah Son Of Mahendra Sah Village- Punchrukhiya, Ps- Malahi, Dist-
East Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Suraj Kumar Tiwari, Advocate

For the Opposite Party/s : Mr. Md. Nazir Ansari, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 26-06-2024 Heard Mr. Suraj Kumar Tiwari, learned counsel for
the petitioner and Mr. Md. Nazir Ansari, learned Additional
Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Paharpur (Malahi) P.S. Case No. 94 of 2024, F.I.R. dated 12.03.2024 registered for the offences punishable under Sections 272, 273 of the Indian Penal Code and Sections 30(a), 41(1) of the Bihar Prohibition & Excise Act.

3. Recovery is of 11.250 liters of foreign liquor.

4. Learned counsel for the petitioner submits that the petitioner has clean antecedent and he has falsely been implicated in the present case on the basis of the disclosure made by local villagers. He further submits that from perusal of the F.I.R. as well as seizure list that nothing has been recovered



from the possession of the petitioner rather recovery has been made from the motorcycle in question and the petitioner has no concern at all with the alleged recovery of illicit liquor or the motorcycle in question. Therefore, the recovery cannot be attributed to 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, nothing has been recovered from conscious possession of the petitioner and he



has been made accused in the present case on the basis of disclosure made by local villagers, petitioner having 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 learned Special Judge, Excise Court No. 1, East Champaran at Motihari in connection with Paharpur (Malahi) PS. Case No. 94 of 2024, 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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