

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39709 of 2024

Arising Out of PS. Case No.-115 Year-2024 Thana- CHAPRA MUFFASIL District- Saran

Krishna Mahto Son of Ramji Mahto, R/O Village- Hasanpurwa Chanchaura,
P.S.- Chapra Muffasil, Dist.- Saran.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Hemant Kumar, Advocate

For the Opposite Party : Mr. Uma Shankar Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 10-07-2024 Heard Mr. Hemant Kumar, the learned counsel for
the petitioner and Mr. Uma Shankar Prasad Singh, the learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Chapra Muffasil PS Case No. 115 of 2024, FIR
dated 28.02.2024, registered for the offences punishable under
Section 30(a) of the Bihar Prohibition and Excise Act.

3. Recovery is of 80 litres of country made liquor.

4. Learned counsel for the petitioner submits that
petitioner has falsely been implicated in the present case. He
further submits that from bare perusal of the FIR it appears that
nothing has been recovered from the conscious possession of
the petitioner, rather the recovery has been made from the
motorcycle in question and petitioner has been made accused in



the present case because petitioner is the owner of the recovered motorcycle in question. He further submits that the co-accused person namely, Nitish Kumar, who was apprehended along with the alleged liquor, has disclosed the name 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. The learned Additional Public Prosecutor for the State on the other hand 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 also submits that petitioner carries five criminal antecedents other than the present one, but fairly admits that petitioner is on bail in the pending matters.

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 nothing has been recovered from conscious possession of the petitioner and the petitioner has been made accused in the present case because he is the owner of the motorcycle in question, let the petitioner, above-named, in the event of his arrest or surrender before the learned trial Court within a period of thirty days from the date of receipt of the order, be released on anticipatory 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 1st Exclusive Special Excise Court, Saran at Chapra, where the case is pending in connection with **Chapra Muffasil PS Case No. 115 of 2024**, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. and also the following conditions:-

(i). Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the learned trial Court and shall remain physically present as directed by the learned trial Court and on his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the learned trial Court.

(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 learned trial Court 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 learned trial Court shall take steps 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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