

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39529 of 2024

Arising Out of PS. Case No.-90 Year-2023 Thana- PAROO District- Muzaffarpur

Mahendra Bhagat Son of Patiram Bhagat R/O Vill.- Gariba, P.S.- Paroo, Dist.-
Muzaffarpur

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Nitu Kumari, Advocate
For the State : Mrs. Gulnar Begum, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 10-07-2024 Heard Ms. Nitu Kumari, learned counsel for the

petitioner and Mrs. Gulnar Begum, learned Additional Public

Prosecutor appearing on behalf of the State.

2. The petitioner is apprehending his arrest in
connection with Paroo P.S. Case No. 90 of 2023, F.I.R. dated
19.02.2023 for the offences punishable under Sections 30(a) of
the Bihar Prohibition and Excise Act.

3. Recovery is of 1.8 liters of foreign liquor.

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 from a bare perusal of
the FIR as well as seizure list it appears that nothing has been
recovered from the conscious possession of the petitioner rather
recovery has been made from the *bathan* which is situated near



the house of the petitioner and local people and local *chaukidar* disclosed that the petitioner has fled away from the place of the occurrence. 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 apart from that the petitioner carries three criminal antecedents other than the present one.

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 been made accused only on the basis of the disclosure made by the local people and local *chaukidar*, 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 Court No.II, Muzaffarpur in connection with Paroo P.S. Case No. 90 of 2023, 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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