

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47730 of 2024

Arising Out of PS. Case No.-22 Year-2024 Thana- Bhawanipur District- Bhagalpur

Abhay Sharma Son of Bijay Kumar Sharma @ Bijay Sharma @ Vijay Kumar
Sharma R/O Vill.- Teldiha, P.S.- Bhawanipur, Dist.- Bhagalpur

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Amrendra Kumar, Advocate
For the State : Mr. Tarkeshwar Nath Thakur, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-08-2024 Heard Mr. Amrendra Kumar, learned counsel for
the petitioner and Mr. Tarkeshwar Nath Thakur, learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Naugachia (Bhawanipur) P.S. Case No. 22 of
2024 corresponding to Special Excise Case No. 1379 of 2024,
F.I.R dated 27.03.2024 registered for the offences punishable
under Section 30(a) of Bihar Prohibition and Excise Act.

3. Recovery is of 22.500 liters of Indian made
foreign liquor.

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 and the



petitioner has not committed any offence as alleged in the FIR. He further submits that it appears from the F.I.R as well as seizure list that nothing has been recovered from the conscious possession of the petitioner rather the recovery has been made from the pond near the 'basa'. He further submits that petitioner has been made accused merely on the basis of the disclosure made by the local choudidar. 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.

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, the petitioner has clean antecedent and the name of the petitioner transpired merely on the basis of the disclosure made by the local choukidar, 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 ADJ-IX cum Special Judge, Excise-I, Bhagalpur in connection with Naugachia (Bhawanipur) P.S. Case No. 22 of 2024 corresponding to Special Excise Case No. 1379 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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