

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47750 of 2024

Arising Out of PS. Case No.-115 Year-2024 Thana- Excise P.S. District- Bhagalpur

Nakul Mandal Son of Lachhu Mandal Resident of Vill- Kalipathar, P.S.-
Fatehpur, District- Jamtara (Jharkhand)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dharmveer Jha, Advocate
For the State : Md. Nazir Ansari, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-08-2024 Heard Mr. Dharmveer Jha, learned counsel for the

petitioner and Md. Nazir Ansari, learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Excise Sadar P.S. Case No. 115 of 2024, F.I.R
dated 07.02.2024 registered for the offences punishable under
Section 30(a) of Bihar Prohibition and Excise Act.

3. Recovery is of 878.400 liters of foreign liquor.

4. Learned counsel for the petitioner submits that
the petitioner is innocent and has falsely been implicated in the
present case merely on the ground that he is owner of the
vehicle in question. He further submits that in fact the petitioner
has given his Bolero pickup van to one Rahul Kumar Mandal on
lease from 04.01.2024 to 03.01.2025 for payment of Rs.63,000/-



per month (*Annexure-3*). He further submits that it appears from the F.I.R itself that nothing has been recovered from the conscious possession of the petitioner. He further submits that the name of the petitioner has been transpired merely on the basis of the disclosure made by the co-accused person. 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 further submits that petitioner carries one more case other than the present one but fairly submits on the basis of paragraph-3 of the bail petition 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 he has been made accused merely on the ground that he is owner of the vehicle in question, 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 Addl. Sessions Judge-IX, Bhagalpur in connection with Excise Sadar P.S. Case No. 115 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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