

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47910 of 2024

Arising Out of PS. Case No.-602 Year-2023 Thana- BHABHUA District- Kaimur (Bhabua)

Ganesh Kumar son of Manoj Paswan R/o Village- Dwarika Bigha Ps- Hilsa
Dist- Nalanda

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Tribhuwan Narayan, Advocate

For the Opposite Party/s : Ms.Pronoti Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 20-07-2024 Heard Mr.Tribhuwan Narayan, learned counsel for
the petitioner and Ms.Pronoti Singh, learned Additional Public
Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Bhabhua (Sonhan) P.S.Case No.602 of 2023, FIR dated 30.06.2023 registered for the offences punishable under Section 30(a) of Bihar Prohibition and Excise (Amendment) Act, 2018.

3. Recovery is of 190.08 liters of country made foreign liquor.

4. Learned counsel for the petitioner submits that the petitioner has clean antecedent. He has falsely been implicated in the present case. Petitioner is not named in the FIR. From a bare perusal of the FIR it appears that nothing has been



recovered from conscious possession or the house of the petitioner rather the recovery has been made from the ambulance in question and the petitioner is neither the driver nor the owner of the ambulance in question and the name of the petitioner has been transpired during investigation on the basis of the confessional statement of co-accused person, namely, Mithlesh Kumar and said Mithlesh Kumar has been granted privilege of anticipatory bail by this Court vide order dated 07.10.2023 passed in Cr. Misc. No.58319 of 2023. 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 petitioners under the Bihar Prohibition and Excise Act.

5. Learned A.P.P. for the State has vehemently opposed the prayer for 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) PLJR 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, petitioner has clean antecedent, he is not named in the FIR and his name has been transpired during investigation on the basis of the confessional statement of co-accused person, namely, Mithlesh Kumar and said Mithlesh Kumar has been granted privilege of anticipatory bail by this Court, 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 No.1-cum-A.D.J.-IV, Kaimur at Bhabhua in connection with Bhabhua (Sonhan) P.S.Case No.602 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/her absence on two consecutive dates without sufficient



reason, his/her 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/her 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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