

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47636 of 2024

Arising Out of PS. Case No.-1 Year-2021 Thana- MOTIHARI MUFASIL District- East
Champaran

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Deeplal Mukhiya Son Of Lorik Mukhiya @ Lagan Mukhiya, R/O- Village
-Hasuaha, PS- Muffasil, District- East Champaran, Motihari.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rahul Singh, Advocate

For the Opposite Party/s : Ms. Indu Kumari Srivastava, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-08-2024 Heard Mr. Rahul Singh, the learned counsel for the

petitioner and Mr. Indu Kumari Srivastava, the learned

Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in

connection with Muffasil PS Case No. 01 of 2021, FIR dated

01.01.2021, registered for the offences punishable under

Sections 30(a), 32 and 41(i) of the Bihar Prohibition and Excise

Act.

3. Recovery is of 100 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 according to the FIR and seizure list nothing

has been recovered from the conscious possession of the



petitioner, rather the recovery has been made from the mango orchard and petitioner is neither the owner nor he is concerned with the allegedly recovered liquor. He further submits that the petitioner has been made accused in the present case due to his previous criminal antecedent of similar nature. 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 is named in the FIR and in addition to that petitioner carries one criminal antecedent of similar nature, however, he fairly admits that 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 and circumstances and mainly the facts that nothing has been recovered from the conscious possession of the petitioner and petitioner is not the owner of the alleged place, 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 Special Judge, Excise Court No. 1, East Champaran, Motihari, where the case is pending in connection with **Muffasil PS Case No. 01 of 2021**, 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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