

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47732 of 2024

Arising Out of PS. Case No.-239 Year-2024 Thana- DAUDNAGAR District- Aurangabad

Mendar Chaudhary @ Dharmendra Chaudharyd Son of Bhola Chaudhary
R/O Ward No. 1, Purani Shahar, Takia Par, Mallah Toli, P.S.- Daudnagar,
Dist.- Aurangabad

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar No.6, Advocate
For the State : Mr. Mritunjay Kumar Nirala, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-08-2024 Heard Mr. Ashok Kumar No.6, learned counsel
for the petitioner and Mr. Mritunjay Kumar Nirala, learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Daudnagar P.S. Case No. 239 of 2024, F.I.R
dated 18.05.2024 registered for the offences punishable under
Section 30(a) of Bihar Prohibition and Excise Act.

3. Recovery is of 84 liters of country made mahua
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 open place (Diyara area). He further submits that the name of the petitioner has been transpired merely on the basis of the disclosure made by the local chaukidar and except the aforesaid no other cogent material has come during the investigation to suggest the involvement of the petitioner in the present 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 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 has been transpired merely on the basis of the disclosure made by the 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 Special Judge, Excise-II, Aurangabad in connection with Daudnagar P.S. Case No. 239 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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