

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48922 of 2024

Arising Out of PS. Case No.-164 Year-2021 Thana- BANIAPUR District- Saran

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Santosh Mandal @ Santosh Kumar Mandal S/O Dhanraj Mandal R/O
Mohalla- Central Colony, Phusro Bazar, P.S- Dhori, Distt.- Bokaro, State-
Jharkhand.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anish Kumar, Advocate

For the Opposite Party/s : Mr. Satyendra Narayan Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 20-07-2024 Heard Mr. Anish Kumar, learned counsel for the

petitioner and Mr. Satyendra Narayan Singh, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest connection
with Baniapur P.S. Case No. 164 of 2021, F.I.R. dated
18.05.2021 registered for the offences punishable under
Sections 420, 414 of the Indian Penal Code and Sections 30(a),
41(1)(2) of the Bihar Prohibition & Excise Act.

3. Recovery is of 2808 liters of illicit liquor.

4. Learned counsel for the petitioner submits that the
petitioner is innocent and he has falsely been implicated in the
present case. He further submits that from perusal of the F.I.R.
as well as seizure list that nothing has been recovered from the



conscious possession of the petitioner rather recovery has been made from the truck in question and the petitioner is neither the owner nor the driver of the truck in question and he has no concern at all with the alleged recovery of illicit liquor. He further submits that the name of the petitioner has been transpired on the basis of confessional statement of co-accused person namely Naresh Chabra who was arrested along with liquor and the truck and except the confessional statement of co-accused person, no other cogent material has come during investigation to suggest the involvement of the petitioner in the present occurrence. Therefore, the recovery cannot be attributed to the petitioner. 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 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 the petitioner carries one more case of similar nature other than the present one.



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 of the case and the fact that nothing has been recovered from conscious possession of the petitioner and the petitioner has been made accused on the basis of confessional statement of co-accused person, 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 Additional District & Sessions Judge 2nd -cum-exclusive Special Excise Court No. 1, Saran at Chhapra in connection with Baniyapur PS. Case No. 164 of 2021, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other following conditions:-

1. 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.

2. 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.

3. 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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