

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.60042 of 2024**

Arising Out of PS. Case No.-138 Year-2024 Thana- BATHNAHA District- Sitamarhi

Lal Babu Ray @ Lal Babu Rai Son of Dilchand Rai, R/o Village- Chandpura,  
Ward no.- 4, P.S.-Bathnaha, Dist.- Sitamarhi.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

**Appearance :**

For the Petitioner : Mr. Vijay Kumar, Advocate  
For the Opposite Party : Ms. Pronoti Singh, APP

**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**  
**ORAL ORDER**

2      11-09-2024                      Heard Mr. Vijay Kumar, the learned counsel for the  
petitioner and Ms. Pronoti Singh, the learned Additional Public  
Prosecutor for the State.

2.              The petitioner is apprehending his arrest in  
connection with Bathnaha PS Case No. 138 of 2024, FIR dated  
13.04.2024, registered for the offences punishable under Section  
30(a) of the Bihar Prohibition and Excise Act.

3.              Recovery is of 1.5 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  
possession of the apprehended co-accused person namely,  
Shivnarayan Rai and the name of petitioner transpired on the



basis of disclosure made by apprehended co-accused person. He lastly submits that except the aforesaid no other cogent material has come during investigation which suggests that 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. Apart from that, he also submits that petitioner carries four cases other than the present, which are similar in nature, however, he fairly admits that out of four cases, petitioner is on bail in two cases.

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 conscious possession of the petitioner and name of petitioner transpired on the basis of disclosure made by apprehended co-accused person, 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 Exclusive Special Judge Excise, Court No. 1, Sitamarhi, where the case is pending in connection with **Bathnaha PS Case No. 138 of 2024**, 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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