

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63282 of 2023

Arising Out of PS. Case No.-45 Year-2023 Thana- Excise P.S. District- Saran

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Dhanesh Kumar @ Dhaneshar Ray Son Of Shivpukar Ray Village- Purvi
Rauza, Ward No. 45, Ps- Nagar Ps, Dist- Saran

... .. Petitioner/s

Versus

The State Of Bihar Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kunal Tiwary, Advocate

For the State : Mr. Arvind Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 27-02-2024 Heard Mr. Kunal Tiwary, learned counsel for the

petitioner and Mr. Arvind Kumar Pandey, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Saran Excise P.S. Case No. 45 of 2023, F.I.R.
dated 14.01.2023 for the offences punishable under Sections
30(a) and 32(3) of the Bihar Prohibition & Excise Act.

3. Recovery is of 86.400 20 liters of foreign 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 from a bare perusal
of the FIR as well as seizure list it appears that nothing has been
recovered from the conscious possession of the petitioner.
Petitioner has not been apprehended at the place of the



occurrence and the petitioner has been made accused in this case only on the basis of the disclosure made by the local people. Except the aforesaid no other cogent material has come during investigation against the petitioner to suggest the involvement of the petitioner in the present case. 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.

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 and the



petitioner has clean antecedent, 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 First Special Excise Judge, (Chapra) Saran in connection with Saran Excise P.S. Case No. 45 of 2023, 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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