

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63444 of 2023

Arising Out of PS. Case No.-714 Year-2019 Thana- SASARAM NAGAR District- Rohtas

Md. Abdulla Son of Mumtaj, Resident of Qtr No. 24, Nadim Colony,
Saharanpur, P.S. and District - Saharanpur (U.P.).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Chandra Mohan Jha, Advocate

For the Opposite Party/s : Dr. Indihar Kumari, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

4 27-02-2024 Heard Mr. Chandra Mohan Jha, the learned counsel
for the petitioner and Dr. Indihar Kumari, the learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Sasaram (Darigaon) PS Case No. 714 of 2019,
FIR dated 12.08.2019, registered for the offences punishable
under Section 30(a) of the Bihar Prohibition and Excise Act.

3. Recovery is of 6652.8 litres of country made liquor.

4. Learned counsel for the petitioner submits that
petitioner has clean antecedent and he has falsely been
implicated in the present case merely on the ground that the
petitioner is the owner of the vehicle in question from which the
illicit liquor has been recovered. He further submits that upon
perusal of the FIR, it appears that nothing has been recovered

from the conscious possession of the petitioner and he has been made accused in the present case mainly on the ground that he is the owner of the vehicle in question. 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 and circumstances and the fact that 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 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 Excise Court No. 2-cum-Additional District and Sessions Judge, Rohtas at Sasaram, where the case is pending in connection with **Sasaram (Darigaon) PS Case No. 714 of 2019**, 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 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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