

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.69845 of 2023

Arising Out of PS. Case No.-380 Year-2023 Thana- Excise P.S. District- Kishanganj

Mujib @ Mojib @ Md Mojibur Rahman @ Mojibur Alam Son of Jainuddin
Resident of Village-Tegharia Ward No. 06, P.S.-Bahadurganj, District-
Kishanganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ram Prawesh Kumar, Advocate
For the Opposite Party/s : Mr. Kumar Ranjit Ranjan, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 05-03-2024 Heard Mr. Ram Prawesh Kumar, learned counsel for

the petitioner and Mr. Kumar Ranjit Ranjan, learned APP for the

State.

2. The petitioner is apprehending his arrest
connection with Madya Nisedh P.S. Case No. 380 of 2023
giving rise to Special Case No. 404 of 2023, F.I.R. dated
21.03.2023 registered for the offences punishable under
Sections 30(a), 32(3) of the Bihar Prohibition and Excise Act.

3. Recovery is of 218.670 liters of foreign liquor.

4. Learned counsel for the petitioner submits that the
petitioner is innocent and 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 the recovery has been made from the vehicle in question and the name of the petitioner has been transpired on that basis that the petitioner is the owner of the vehicle in question. He further submits that from perusal of the F.I.R. it appears that co-accused person namely Dilshad Alam who was arrested along with the liquor and the vehicle in question and the said Dilshad Alam is the son of the petitioner and the petitioner has been made accused on the ground that the petitioner 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. Learned counsel for the State further submits that from perusal of the F.I.R. it appears that the petitioner is the owner of the vehicle and apart from that the petitioner carries three more cases other than the present one but fairly submits on the basis of paragraph-3 of the bail petition



that the petitioner is on bail in all the pending matters.

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 name of the petitioner has been transpired only on the basis that he is the owner of the vehicle in question, 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 and Sessions Judge-IV, Special Judge (Excise-II), Kishanganj in connection with Madya Nisedh PS. Case No. 380 of 2023 giving rise to Special Case No. 404 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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