

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74678 of 2023

Arising Out of PS. Case No.-533 Year-2023 Thana- MOTIHARI MUFASIL District- East
Champaran

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USHA DEVI W/o Harendra Sah R/o vill - Nandpur, P.S. - Muffasil, Distt. -
East Champaran, Motihari

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar, Advocate
For the Opposite Party/s : Mr. Ramesh Chandra, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 29-02-2024 Heard Mr. Rajesh Kumar, learned counsel for the

petitioner and Mr. Ramesh Chandra, learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending her arrest in
connection with Muffasil P.S. Case No. 533 of 2023 F.I.R. dated
27.07.2023 registered for the offences punishable under
Sections 30(a), 32, 41 of Bihar Prohibition and Excise
(Amendment) Act, 2022.

3. Recovery is of 08 litres of country made 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
perusal of the F.I.R. as well as seizure list it appears that nothing



has been recovered from the conscious possession of the petitioner rather recovery has been made from the house of the petitioner and the petitioner is not the absolute owner of the house 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, nothing has been recovered from conscious possession of the petitioner and the petitioner having clean antecedent as well as the petitioner is not



the absolute owner of the house in question, let the petitioner, above named, in the event of her 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 Special Judge Excise Court No. 1, Motihari, East Champaran in connection with Muffasil PS. Case No. 533 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 her absence on two consecutive dates without sufficient reason, her 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 her 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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