

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74360 of 2023

Arising Out of PS. Case No.-311 Year-2022 Thana- MANJHI District- Saran

Rasagulla Choudhary @ Vishewakarma Choudhary son of Late Jaglal Choudhary R/o Marhua P.S- Manjhi Dist- Saran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar Tiwary, Advocate
For the Opposite Party/s : Mr. Md. Shakir Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 29-02-2024 Heard Mr. Mritunjay Kumar Tiwary, learned counsel
for the petitioner and Mr. Md. Shakir Ahmad, learned Additional
Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Manjhi P.S. Case No. 311 of 2022 F.I.R. dated 23.08.2022 registered for the offences punishable under Sections 36, 44, 47, 38, 41(i) of the Bihar Prohibition and Excise Act, 2022.

3. The case relates to recovery of 15 litres semi prepared countrymade liquor which was destroyed after keeping some portion for sample of chemical examination.

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 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 and co-accused person namely Jagdish Chaudhary who happens to be the uncle of the petitioner has been granted anticipatory bail by a Coordinate Bench of this Court vide order dated 29.04.2023 passed in Cr. Misc. No. 13019 of 2023. 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. as well as seizure list that recovery has been made from the house of the petitioner and apart from that the petitioner carries one more case other than the present one but fairly submits on the basis of paragraph-3 of the petition that the petitioner is on bail in the



pending matter.

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, 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 Special Judge, First, Excise, Chapra, Saran in connection with Manjhi PS. Case No. 311 of 2022, 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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