

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73678 of 2023

Arising Out of PS. Case No.-832 Year-2023 Thana- TURKAULIYA District- East
Champaran

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Rajdev Mukhiya S/O Late Mohar Mukhiya R/O Village- Siswa Ward No. 02,
P.S- Banjariya, Distt.- East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Singh, Advocate
For the Opposite Party/s : Mr.Parmanand Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 29-02-2024 Heard Mr.Ajay Kumar Singh, learned counsel for
the petitioner and Mr.Parmanand Kumar, learned Additional
Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Turkauliya (Banjariya) P.S.Case No.832 of
2023,FIR dated 28.07.2023 registered for the offences
punishable under Section 30(a) of Bihar Prohibition and Excise
(Amendment) Act, 2022.

3. Recovery is of 40 liters of country made liquor.

4. Learned counsel for the petitioner submits that the
petitioner has clean antecedent. He has falsely been implicated
in the present case. As per allegation in the FIR, total 40 liters of
country made liquor was recovered from the Tat-Fush house of



the petitioner. Learned counsel for the petitioner submits that from a bare perusal of the FIR as well as the seizure list that nothing has been recovered from conscious possession of the petitioner rather the 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 petitioners under the Bihar Prohibition and Excise Act.

5. Learned A.P.P. for the State has vehemently opposed the prayer for 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) PLJR 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, petitioner has clean



antecedent, 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, Excise Court No.-1, East Champaran at Motihari in connection with Turkauliya (Banjariya) P.S.Case No.832 of 2023, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other 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/her absence on two consecutive dates without sufficient reason, his/her 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/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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