

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76175 of 2024

Arising Out of PS. Case No.-599 Year-2024 Thana- AHYAPUR District- Muzaffarpur

Santosh Kumar @ Santosh Kuswaha @ Santosh Kushwaha S/O Vishawanth Prasad, R/O Village- Ali Neura, P.S- Meenapur, Distt.- Muzaffarpur.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Ms. Smiti Bharti, Advocate

For the Opposite Party/s : Mr. Bishweshwar Ram, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 03-12-2024 Heard Ms. Smiti Bharti, the learned counsel for the petitioner and Mr. Bishweshwar Ram, the learned Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Ahiyapur PS Case No. 599 of 2024, FIR dated 05.05.2024, registered for the offences punishable under Sections 30(a) and 41 of the Bihar Prohibition and Excise Act.

3. Recovery is of 686.16 litres of country made liquor.

4. Learned counsel for the petitioner submits that petitioner has falsely been implicated in the present case. She further submits that from perusal of the FIR, it appears that nothing has been recovered from the conscious possession of the petitioner, rather the recovery has been made from the truck and other vehicles in question. She further submits that name of the petitioner transpired on the basis of disclosure made by the local



chowkidar and except the aforesaid, no other cogent material has come during investigation which suggests the involvement of the petitioner in the present occurrence. She further submits that petitioner has been made accused in the present case merely on the ground that petitioner has previous criminal history of similar nature. She lastly submits that co-accused persons namely, Manjay Paswan, Manish Kumar, Santosh Rai, Bablu Kumar and Sandeep Kumar have been granted the privilege of anticipatory bail by this Court as well as different Benches of this Court vide orders dated 07.08.2024, 23.07.2024, 07.08.2024, 06.08.2024 and 20.08.2024 passed in Cr. Misc. No. 48813 of 2024, Cr. Misc. No. 43634 of 2024, Cr. Misc. No. 47597 of 2024, Cr. Misc. No. 46146 of 2024 and Cr. Misc. No. 59677 of 2024 respectively.

5. The learned Additional Public Prosecutor for the State on the other hand 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. He further submits that petitioner carries five case of similar nature other than the present, but he fairly submits that out of five cases, petitioner is on bail in four cases and one case is pending for consideration.

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 mainly the facts that nothing has been recovered from conscious possession of the petitioner and various similarly situated co-accused persons have been granted the privilege of anticipatory bail by this Court as well as different Benches of this Court, let the petitioner, above-named, in the event of his arrest or surrender before the learned trial Court 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 Court, Excise-I, Muzaffarpur, where the case is pending in connection with **Ahiyapur PS Case No. 599 of 2024**, 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 learned



trial Court and shall remain physically present as directed by the learned trial Court and on his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the learned trial Court.

(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 learned trial Court 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 learned trial Court shall take steps 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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