

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73706 of 2023

Arising Out of PS. Case No.-103 Year-2023 Thana- HASANPUR District- Samastipur

Shivam Kumar @ Shubham Kumar Son Of Pradip Kumar @ Pradeep Kumar
Thakur @ Pradip Kumar Thakur, Resident Of Village- Rampur, Ps- Hasanpur,
Dist- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Jitendra Narain Sinha, Advocate

For the Opposite Party/s : Mr.Shyam Bihari Singh,APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 29-02-2024 Heard Mr.Jitendra Narain Sinha, learned counsel for
the petitioner and Mr.Shyam Bihari Singh, learned Additional
Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Hasanpur P.S.Case No.103 of 2023,FIR dated
11.06.2023 registered for the offences punishable under Section
30(a) of Bihar Prohibition and Excise (Amendment) Act, 2018.

3. Recovery is of 107.100 liters of foreign liquor.

4. Learned counsel for the petitioner submits that the
petitioner has clean antecedent. He has falsely been implicated
in the present case merely on the ground that the petitioner is
son of co-accused person, namely, Pradip Kumar Thakur.
Further submits that from a bare perusal of the FIR as well as



the seizure list that the recovery has been made from the house in question and the father of the petitioner is absolute owner of the house in question and he has been made accused in the present case merely on the ground that he is son of co-accused and co-accused person, namely, Sanjay Mahto@ Sanjay Kumar @ Gultain Mahto, from whom the recovery has also been made from his house, has been granted privilege of anticipatory bail by a Coordinate Bench of this Hon'ble Court vide order dated 31.08.2023 passed in Cr. Misc. No.57411 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 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 and his name has been transpired on the ground that the petitioner is son of co-accused person, namely, Pradeep Kumar Thakur, 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 Exclusive Special Judge, Excise Court No.-1, Samastipur in connection with Hasanpur P.S.Case No.103 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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