

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80304 of 2024

Arising Out of PS. Case No.-11 Year-2023 Thana- WARISNAGAR District- Samastipur

Arjun Mahato @ Arjun Kumar S/O Gorelal Mahato Resident of Village-
Hardiyachayak, P.S- Khanpur, Distt.- Samastipur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bijay Bhushan Prasad, Advocate

For the Opposite Party/s : Mr.Yogendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 03-12-2024 Heard Mr.Bijay Bhushan Prasad, learned counsel
for the petitioner and Mr.Yogendra Kumar Singh, learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Warisnagar P.S.Case No.11 of 2023,FIR dated 10.01.2023 registered for the offences punishable under Sections 30(a),41(1)(2),32(2),32(3) of Bihar Prohibition and Excise (Amendment) Act, 2022.

3. Recovery is of 774 liters of foreign liquor.

4. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the present case on the basis of the disclosure made by apprehended co-accused person, namely, Mithun Kumar and it appears from the FIR itself that nothing has been recovered from conscious possession of the



petitioner rather the recovery has been made from the Pick-Up Van and six motorcycles and petitioner has no concern at all with the alleged recovery of illicit liquor or the vehicles in question and except the disclosure made by the co-accused person, no other cogent material has come during investigation against the petitioner to suggest the involvement of the petitioner in the present occurrence and co-accused persons, namely, Lal Babu Mahto and Mahesh Kumar Mahto & Ors. have been granted privilege of anticipatory bail by a Coordinate Bench of this Hon'ble Court vide orders dated 10.05.2023 passed in Cr. Misc. Nos.17786 of 2023 and 18015 of 2023 and other similarly situated co-accused persons have also been granted privilege of anticipatory bail by different Coordinate Benches of this Hon'ble Court. 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. Further submits that the petitioner carries two



more cases other than the present one but fairly submits that the petitioner is on bail in both the cases, as mentioned in para-3 of the anticipatory bail petition.

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 and 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-2, Samastipur in connection with Warisnagar P.S. Case No.11 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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