

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11065 of 2024

Arising Out of PS. Case No.-257 Year-2020 Thana- GARKHA District- Saran

Shyambabu Ray Son of Late Dhanraj Ray R/o vill - Kasina Gachhi Tola, P.S.
- Garkha, Distt. - Saran, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Pramod Kumar Yadav, Advocate

For the Opposite Party/s : Mrs. Asha Kumari, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

5 18-07-2024 Heard Mr. Pramod Kumar Yadav, learned counsel for
the petitioner and Mrs. Asha Kumari, learned Additional Public
Prosecutor for the State.

2. The petitioner is apprehending his arrest connection
with Garkha P.S. Case No. 257 of 2020, F.I.R. dated 12.06.2020
registered for the offences punishable under Section 30(a) of
the Excise Act and Sections 413/414 of the Indian Penal Code.

3. Recovery is of 20 liters of country made liquor.

4. Learned counsel for the petitioner submits that the
petitioner is innocent and he has falsely been implicated in the
present case. He further submits that from perusal of the F.I.R. it
appears that nothing has been recovered from the conscious
possession of the petitioner rather recovery has been made from
the newly constructed house of the petitioner in which no one



resides in that house. He further submits that co-accused person namely Usha Devi who is wife of the petitioner has been granted the privilege of the petitioner vide order dated 01.11.2023 passed in Cr. Misc. No. 66381 of 2023. Therefore, the recovery cannot be attributed to the petitioner. 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. He further submits that the petitioner is named in the F.I.R. and it appears that the recovery has been made from the newly constructed house of the petitioner and apart from that the petitioner carries five more cases of similar nature but fairly submits that the petitioner is on bail in all the pending matters as stated in paragraph-3 of the 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) 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 circumstance of the case and the fact that nothing has been recovered from conscious possession of the petitioner rather recovery has been made from the newly constructed house 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 SPL Judge (I) Excise, Chapra, Saran in connection with Garkha PS. Case No. 257 of 2020, 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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