

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1927 of 2024

Arising Out of PS. Case No.-311 Year-2023 Thana- SARAI RANJAN District- Samastipur

Ashok Sah @ Ashok Kumar Son of Ramnandan Sah, Resident of Village -
Bajidpur Meyari, Police Station - Sarairanjan, District - Samastipur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mahendra Pratap, Advocate

For the Opposite Party/s : Mr. Anand Kishore Choudhary, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 31-01-2024 Heard Mr. Abhishek Kumar, the learned counsel
for the petitioner and Mr. Anand Kishore Choudhary, the
learned Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Sarairanjan PS Case No. 311 of 2023, FIR
dated 07.11.2023, registered for the offences punishable under
Sections 30(a), 41(i)(ii) of the Bihar Prohibition and Excise Act.

3. Recovery is of 455.445 litres of country made
liquor.

4. Learned counsel for the petitioner submits that
petitioner has clean antecedent and he has falsely been
implicated in the present case. He further submits that according
to the FIR and seizure list, recovery has been made from one
Alto car and petitioner is neither the driver nor the owner of the

seized vehicle and he has no concern with the allegedly recovered liquor and name of the petitioner has been transpired on the disclosure made by local chowkidar. It is further submitted that a similarly situated co-accused person namely, Sunil Kumar Jha has been granted bail by a co-ordinate Bench of this Court vide order dated 15.01.2024 passed in Cr. Misc. No. 1405 of 2024. 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 also the fact that the petitioner carries four cases of similar nature as mentioned in para no. 3 of the bail application and on the basis of above-mentioned facts 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) 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 the fact that nothing has been recovered from conscious possession of the petitioner and one similarly situated co-accused person have been granted bail by a co-ordinate Bench of this Court, 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 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 Special Judge Excise-II, Samastipur, where the case is pending in connection with **Sarairanjan PS Case No. 311 of 2023**, 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 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.

(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 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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