

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1944 of 2024

Arising Out of PS. Case No.-102 Year-2023 Thana- TARABARI District- Araria

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Mukesh Yadav@ Mukesh Kumar Yadav Son of Shanichar Yadav @ Kailu
yadav, resident of Village- Sahasmal Dhurdhula, P.S.- Tarabari, Distt.- Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kishore Bharti, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 31-01-2024 Heard Mr. Vijay Kishore Bharti, the learned

counsel for the petitioner and Mr. Anil Kumar, the learned

Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in

connection with Tarabari PS Case No. 102 of 2023, FIR dated

18.08.2023, registered for the offences punishable under

Sections 272 and 273 of the Indian Penal Code and under

Section 30(a) of the Bihar Prohibition and Excise Act.

3. Recovery is of 135 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 mainly on the basis of disclosure

made by the co-accused persons, namely Shanichar Yadav and

Ashish Kumar Sah. He further submits that the petitioner has no

concern at all with the allegedly recovered liquor, the motorcycle in question and other co-accused persons. 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.

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, as nothing has been recovered from conscious possession of the petitioner and the petitioner has clean antecedent, 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 Exclusive Special Court, Excise-2, Araria, where the case is pending in connection with **Tarabari PS Case No. 102 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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