

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1827 of 2024

Arising Out of PS. Case No.-331 Year-2020 Thana- Excise P.S. District- Madhepura

Badal Kumar Shamhu Yadav R/o- Village Jaipalpatti, Ward no 15 PS-
Madhepura Distt- Madhepura

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Uday Chand Prasad, Advocate

For the Opposite Party/s : Mr. Ahmad Ali, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 31-01-2024 Heard Mr. Uday Chand Prasad, learned counsel
for the petitioner and Mr. Ahmad Ali, learned Additional Public
Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Excise P.S. Case No. 331 of 2019-20, F.I.R dated 08.01.2020 registered for the offences punishable under Section 30(a) of Bihar Prohibition and Excise Act, 2018.

3. Recovery is of 8.205 liters of foreign liquor.

4. Learned counsel for the petitioner submits that the petitioner is innocent and he has falsely been implicated in the present case merely on the basis of the disclosure made by the apprehended persons namely, Chhotu Kumar and Sonu Kumar. He further submits that the allegation as alleged in the F.I.R is false and fabricated. He further submits that it appears



from the F.I.R that nothing has been recovered from the conscious possession of the petitioner and the petitioner has no concern at all with the alleged recovery of the illicit liquor and the 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. He further submits that the petitioner carries two criminal antecedents other than the present one but fairly submits on the basis of paragraph 3 of the bail petition that the petitioner is on bail in both cases.

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 that 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 the learned Additional Sessions Judge VII, cum Special Judge Excise-II, Madhepura in connection with Excise P.S. Case No. 331 of 2019-20, 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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