

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2162 of 2025

Arising Out of PS. Case No.-457 Year-2024 Thana- MIRGANJ District- Gopalganj

Harkesh Thakur S/o Lakshmi Thakur Resident of Village - Baniya Tola,
Kilpur, P.S. - Nautan, District - Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bijay Prakash Singh, Advocate

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

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 17-01-2025 Heard Mr. Bijay Prakash Singh, learned counsel for
the petitioner and Mr. Manoj Kumar, learned Additional Public
Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Mirganj P.S. Case No. 457 of 2024, F.I.R. dated 04.10.2024 registered for the offences punishable under Section 317(5) of Bharatiya Nyaya Sanhiya, 2023 and Section 30(a) of Bihar Prohibition and Excise Act.

3. Recovery is of 12 liters 800 ml of I.M.F.L.

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 it appears from the F.I.R that nothing has been recovered from the conscious possession of the petitioner rather the recovery has been made



from the house of the co-accused person, namely, Kailash Chauhan and the name of the petitioner has been transpired on the basis of the confessional statement of the co-accused person, namely, Suraj Basfor. There is non-compliance with mandatory procedure prescribed for recovery under Section 100 of Cr.P.C./ Section 103 of B.N.S.S. No case, whatsoever, would be made out against the petitioner under the Bihar Prohibition and Excise Act.

5. Learned Additional Public Prosecutor for the State, on the other hand, 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 one more case other than the present one but fairly submits on the basis of the paragraph no.3 of the bail petition that the petitioner is on bail in the pending matter.

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, nothing has been recovered from conscious possession of the petitioner and he has been made accused on the basis of the confessional statement of the co-accused person, 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-IV-Cum- Exclusive Special Excise Court-II, Gopalganj in connection with Mirganj P.S. Case No. 457 of 2024, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure/ Section 482(2) of B.N.S.S., 2023 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 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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