

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5157 of 2025

Arising Out of PS. Case No.-131 Year-2024 Thana- NAANPUR District- Sitamarhi

Rakesh Sahani @ Rakesh Kumar Son of Sogarath Sahani Village -Bhataul,
P.O- Mahisautha , p.s -Nanpur, District -Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Devendra Kumar, Advocate

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

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 15-02-2025 Heard Mr. Devendra Kumar, learned counsel for the

petitioner and Mr. Anil Kumar, learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Nanpur P.S. Case No. 131 of 2024, F.I.R. dated
20.03.2024 registered for the offences punishable under Section
30(a) of the Bihar Prohibition & Excise Act.

3. Recovery is of 25 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 the allegation as alleged in
the F.I.R. is false and fabricated and the petitioner has not
committed any offence as alleged in the F.I.R. It appears from
the F.I.R. as well as seizure list that nothing has been recovered



from the conscious possession of the petitioner rather recovery has been made from the bamboo orchard situated behind the house of the petitioner. He further submits that the petitioner has no role at all with the alleged recovery of illicit liquor and he has been made accused in the present case on the basis of disclosure made by local choudidar. 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./ Section 103 of BNSS, 2023 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 one more case of similar nature but fairly submits on the basis of paragraph-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 that nothing has been recovered from conscious possession of the petitioner rather the recovery has been made from the bamboo orchard situated behind the 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 Special Judge Excise-cum-Exclusive Special Excise Court-II, Sitamarhi in connection with Nanpur PS. Case No. 131 of 2024, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure/Section 482(2) of BNSS, 2023 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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