

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5678 of 2025

Arising Out of PS. Case No.-1271 Year-2022 Thana- BIHTA District- Patna

Gop Ray @ Upendra Ray S/o Parma Ray, R/o village - Moudahi, P.S. - Bihta,
Distt.- Patna.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Manoj Kumar Manoj, Advocate
For the Opposite Party/s : Mr. Anand Kishore Choudhary, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 15-02-2025 Heard Mr. Manoj Kumar Manoj, 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 Bihta PS Case No. 1271 of 2022, FIR dated
26.11.2022, registered for the offences punishable under Section
30(a) of the Bihar Prohibition and Excise Act.

3. Recovery is of 100 litres of country made mahua
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, 100 litres of illicit liquor has been
recovered from the house of the petitioner. He further submits
that although recovery has been made from the house of the



petitioner, however, petitioner is not the absolute owner of the house in question and he has been made accused in the present case on the basis of information furnished by the local chowkidar and local chowkidar had informed the police that petitioner was involved in selling of illegal liquor from his house. He further submits that it appears from bare perusal of FIR that nothing has been recovered from the conscious possession of 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 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.

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 circumstances and mainly the facts that petitioner has clean antecedent, nothing has been recovered from conscious possession of the petitioner and petitioner is not the absolute owner of the house in question, let the petitioner, above-named, in the event of his arrest or surrender before the learned trial Court 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 Excise Judge, Danapur, where the case is pending in connection with **Bihta PS Case No. 1271 of 2022**, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. / Section 482(2) of the BNSS, 2023 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 learned trial Court and shall remain physically present as directed by the learned trial Court and on his absence on two consecutive dates without sufficient reason, his bail bond shall



be cancelled by the learned trial Court.

(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 learned trial Court 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 learned trial Court shall take steps 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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