

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5042 of 2025

Arising Out of PS. Case No.-701 Year-2024 Thana- PHULWARISHARIF District- Patna

Shambhu Kumar Son of Late Chandrika Ram R/O-Village- Dariyapur, P.O.-
Korean, P.S.-Naubatpur, District- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Ambastha, Advocate
For the Opposite Party/s : Mr. Khurshid Anwar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 19-02-2025 Heard Mr. Rajeev Kumar Ambastha, learned
counsel for the petitioner and Mr. Khurshid Anwar, learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Phulwari Sharif (Janipur) P.S. Case No. 701 of
2024, F.I.R dated 17.05.2024 registered for the offences
punishable under Section 30(a) of Bihar Prohibition and Excise
Amendment Act, 2022.

3. Recovery is of 30 liters of country made wine.

4. Learned counsel for the petitioner submits that
the petitioner has clean antecedent and he has falsely been
implicated in the present case merely on the ground that the
petitioner is the owner of the tempo in question from where
recovery has been made. He further submits that although the



petitioner is the owner of the tempo but he has given the said tempo to his driver, namely, Muna Kumar and he was apprehended with the illicit liquor. There is non-compliance with mandatory procedure prescribed for recovery under Section 100 of Cr.P.C / Section 103 of Bhartiya Nagarik Suraksha Sanhita. No case, whatsoever, would be made out against the petitioner under the Bihar Prohibition and Excise Act.

5. 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 that the petitioner has clean antecedent, nothing has been recovered from conscious possession of the petitioner and the name of the



petitioner has been transpired on the basis of the fact that he is owner of the tempo in question, 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 Special Judge Excise-1, Patna in connection with Phulwari Sharif (Janipur) P.S. Case No. 701 of 2024, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure / Section 482(2) of the Bhartiya Nagarik Suraksha Sanhita 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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