

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5138 of 2025

Arising Out of PS. Case No.-454 Year-2022 Thana- ARA MUFFSIL District- Bhojpur

Yogendra Rai @ Yogendra Ray Son of Dineshwar Ray Resident of Village-
Dhudhuan, P.S.- Ara Muffasil, District- Bhojpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Gopal Krishna Nishant, Advocate

For the Opposite Party/s : Mr. Suresh Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 15-02-2025 Heard Mr. Gopal Krishna Nishant, learned counsel
for the petitioner and Mr. Suresh Prasad Singh, learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest connection
with Ara Muffasil P.S. Case No. 454 of 2022, F.I.R. dated
29.12.2022 registered for the offences punishable under Section
30(a) of Bihar Prohibition & Excise (Amendment) Act, 2018.

3. Recovery is of 100 liters of country made liquor.

4. Learned counsel for the petitioner submits that the
petitioner has clean antecedent and he has falsely been
implicated in the present case. He further submits that the
petitioner is the owner of Tempo in question who is father of co-
accused Raju Rai and the said Raju Rai was apprehended along
with liquor which was kept in the Tempo in question. Learned



counsel for the petitioner further submits that the petitioner has been made accused in the present case merely on the ground that the petitioner is the owner of the vehicle in question and 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 Tempo in question and the driver of the Tempo is co-accused Raju Rai who happens to be son of the petitioner. 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.

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 the fact that the petitioner having clean antecedent and he has been made accused merely on the ground that he is the owner of the Tempo in question and his son was apprehended along with illicit liquor and 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 learned Exclusive Special Excise Judge Court No. 1st, Bhojpur at Ara in connection with Ara Muffasil PS. Case No. 454 of 2022, 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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