

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8715 of 2025

Arising Out of PS. Case No.-287 Year-2023 Thana- SARAI District- Vaishali

Santosh Ray Son of Lagandev Ray Resident of village -Nawanagar PS-
Bidupur District- Vaishali

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manish Chandra Gandhi, Advocate
For the Opposite Party/s : Mr. Shyam Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 06-03-2025 Heard Mr. Manish Chandra Gandhi, learned counsel
for the petitioner and Mr. Shyam Bihari Singh, learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest connection
with Sarai P.S. Case No.287 of 2023, F.I.R. dated 31.10.2023
registered for the offences punishable under Section 30(a) of the
Bihar Prohibition and Excise Act.

3. Recovery is of 70 liters of countrymade liquor from
tempo bearing registration no.BR31PA-6783.

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 it appears
from the F.I.R. and seizure list itself that nothing has been
recovered from the conscious possession of the petitioner rather
recovery has been made from the tempo in question and the



petitioner has been made accused only on the ground that petitioner is owner of the tempo in question.

5. Learned counsel for the petitioner further submits that the present occurrence took place on 31.10.2023, but the petitioner had sold the tempo in question to one Ranjeet Ray on 21.03.2021 before the occurrence and he had not transferred the tempo in his name. He further submits that except the aforesaid, no other cogent material has come during investigation to suggest the involvement of the petitioner in the present occurrence. 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.

6. 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.

7. 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.

8. Considering the aforesaid facts that petitioner has clean antecedent, nothing has been recovered from conscious possession of the petitioner and the petitioner has been made accused only on the ground that petitioner is owner of the tempo, although the petitioner had sold the tempo in the year 2021 itself, 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 and Prohibition Court (Second)-cum-District and Sessions Judge, Hajipur, Vaishali in connection with Sarai P.S. Case No.287 of 2023, 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:-

(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)

Prakash Narayan

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