

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36251 of 2025

Arising Out of PS. Case No.-25 Year-2025 Thana- VAINI District- Samastipur

Shivanand Gandhi @ Gandhi S/o Shyam Sunder Gandhi @ Shyam Babu @
Shyam Kumar Suman R/o Vill.- Tahra Gopalpur, P.S.- Waini, District-
Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shashank Shekhar, Advocate

For the Opposite Party/s : Mr.Ram Bilash Roy Raman, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 25-06-2025 Heard Mr.Shashank Shekhar, learned counsel for the

petitioner and Mr.Ram Bilash Roy Raman, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Waini P.S.Case No.25 of 2025, FIR dated
26.03.2025 registered for the offences punishable under
Sections 30(a),36 and 41(1) of Bihar Prohibition and Excise
Act, 2022.

3. Recovery is of 1259.76 liters of foreign liquor.

4. Learned counsel for the petitioner submits that on
the basis of the disclosure made by the local Chaukidar, the
petitioner has been made accused in the present case. It appears
from the FIR as well as seizure list that nothing has been



recovered from conscious possession of the petitioner rather the recovery has been made from the Truck in question and petitioner is neither the owner nor the driver of the Truck in question and he has been made accused in the present case due to his previous criminal antecedents. 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. Learned A.P.P. for the State has vehemently opposed the prayer for 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. Further submits that the petitioner carries two more cases of similar nature other than the present one but fairly submits that the petitioner is on bail in all the cases, as mentioned in para-3 of the anticipatory bail petition.

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) PLJR 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, nothing has been recovered from conscious possession of the petitioner and name of the petitioner has been transpired during investigation on the basis of the disclosure made by the local Chaukidar, 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 Excise Court-II, Samastipur in connection with Waini P.S.Case No.25 of 2025, 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/her absence on two consecutive dates without sufficient reason, his/her 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/her 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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