

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39837 of 2025

Arising Out of PS. Case No.-164 Year-2022 Thana- BITHAN District- Samastipur

Gayanand Yadav son of Late Ramratan Yadav Resident of Village- Kurwan
Tola Akonma PS- Hasanpur, Dist- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sarbottam Kumar Sarkar, Advocate

For the Opposite Party/s : Mr.Bhanu Pratap Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 15-07-2025 Heard Mr.Sarbottam Kumar Sarkar, learned counsel
for the petitioner and Mr.Bhanu Pratap Singh, learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Bithan P.S.Case No.164 of 2022,FIR dated 13.09.2022 registered for the offences punishable under Sections 419,420,467,471,34 of IPC and Sections 30(a),32(1),32(2),41(1) of Bihar Prohibition and Excise (Amendment) Act, 2022.

3. Recovery is of 2190.6 liters of illegal foreign liquor.

4. Learned counsel for the petitioner submits that the petitioner has clean antecedent and he has falsely been implicated in the present case. Altogether 2190.6 liters of illegal



foreign liquor was recovered from the vehicle in question. It appears from the FIR as well as the seizure list that nothing has been recovered from conscious possession of the petitioner rather the recovery has been made from the Bus and Motorcycle in question and from a bare perusal of the FIR, it appears that four persons were apprehended at the place of occurrence but they have not disclosed the name of the petitioner and petitioner has been made accused in the present case merely on the ground that he is owner of one of the motorcycles in question. Learned counsel for the petitioner submits that in fact the petitioner has given the motorcycle in question to one Pappu Kumar, who is son-in-law of the petitioner and he was apprehended alongwith illicit liquor and petitioner has been made accused in the present case merely on the ground that he is owner of the motorcycle in question. 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 petitioners 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.

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, petitioner has clean antecedent, nothing has been recovered from conscious possession of the petitioner and even the apprehended co-accused persons have not disclosed the name of the petitioner and petitioner has been made accused in the present case merely on the ground that he is owner of the motorcycle 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 learned Exclusive Special Excise 1st , Samastipur in connection with Bithan P.S.Case No.164 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:-

(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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