

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35733 of 2025

Arising Out of PS. Case No.-2 Year-2024 Thana- PHULWARIYA District- Gopalganj

Sonu Mishra Son of Balistar Mishra Resident of Village- Bhaluhi, P.S.-
Barhariya, Distt.- Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kumar Harshvardhan, Advocate

For the Opposite Party/s : Mr. Shyameshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

- 2 16-06-2025 1. Learned counsel for the petitioner seeks permission to delete paragraph-9 of the bail application.
2. Permission is accorded.
3. Heard Mr. Kumar Harshvardhan, learned counsel for the petitioner and Mr. Shyameshwar Dayal, learned Additional Public Prosecutor for the State.
4. The petitioner is apprehending his arrest in connection with Phulwariya P.S. Case No. 02 of 2024, F.I.R dated 01.01.2024 registered for the offences punishable under Section 30(a) of Bihar Prohibition and Excise Act.
5. Recovery is of 252 liters of country made liquor.
6. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in the present case. He further submits that the allegation as alleged in



the F.I.R is false and fabricated. He further submits that it appears from the F.I.R that nothing has been recovered from the conscious possession of the petitioner rather the recovery has been made from a silver colour Santro Car bearing registration no. UP-53-AN-6634 and the petitioner has been made accused merely on the ground that he is owner of the car in question. 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.

7. 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. He further submits that the petitioner carries four criminal antecedents of similar nature other than the present one but fairly submits on the basis of paragraph-3 of the bail application that the petitioner is on bail in one out of four cases.

8. 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.

9. Considering the aforesaid facts, nothing has been recovered from conscious possession of the petitioner and the petitioner has been made accused merely on the ground that he is the owner of the car 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 Additional District & Sessions Judge-XIII-cum-Special Excise Court No.I, Gopalganj in connection with Phulwariya P.S. Case No. 02 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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