

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41038 of 2025**

Arising Out of PS. Case No.-287 Year-2022 Thana- BARHIYA District- Lakhisarai

=====

Kundan Kumar S/o Devendra Singh R/o Village- Dumari, P.S.- Barahiya,
District- Lakhisarai

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

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

For the Opposite Party/s : Dr. Kumar Uday Pratap, APP

=====

**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER**

2 15-07-2025 Heard Mr. Mukesh Kumar, learned counsel for the

petitioner and Dr. Kumar Uday Pratap, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Barahiya P.S. Case No. 287 of 2022, F.I.R
dated 31.12.2022 registered for the offences punishable under
Section 30(a) of Bihar Prohibition and Excise Amendment Act,
2018.

3. Recovery is of 90 liters of foreign liquor.

4. Learned counsel for the petitioner submits that
the petitioner is innocent and he has falsely been implicated in
the present case on the basis of disclosure made by the
apprehended co-accused who happens to be driver of the vehicle
in question. He further submits that it appears from the F.I.R



that nothing has been recovered from the conscious possession of the petitioner rather 90 liters of foreign liquor has been recovered from the Alto Car in question. He further submits that the co-accused has informed the police that the petitioner had escaped from the place of occurrence. 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.

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. He further submits that the co-accused has disclosed the name of the petitioner and apart from that the petitioner carries one criminal antecedent other than the present one.

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 that nothing has been recovered from conscious possession of the petitioner and the name of the petitioner has been transpired on the basis of the disclosure made by the co-accused person, 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 IV cum Special Excise Court 1, Lakhisarai in connection with Barahiya P.S. Case No. 287 of 2022, 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)

Vanisha/-

U		T	
---	--	---	--

