

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38286 of 2025

Arising Out of PS. Case No.-52 Year-2024 Thana- Kalyan Bigha District- Nalanda

Kapil Gope @ Kapil Yadav S/o Late Ram Chandar Yadav Resident of
Village- Kolwan, P.S- Kalyan Bigha (Harnaut), District- Nalanda

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the State : Mr. Parmanand Prasad, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 23-06-2025 Heard Mr. Sanjay Kumar, learned counsel for the

petitioner and Mr. Parmanand Prasad, learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest connection
with Kalayan Bigha P.S. Case No. 52 of 2024, F.I.R. dated
21.08.2024 registered for the offences punishable under Section
30(a) of the Bihar Liquor Prohibition & Excise Amendment
Act, 2018.

3. Recovery is of 40 liters of country made liquor.

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. as well as seizure list that nothing has been
recovered from the conscious possession of the petitioner rather



recovery has been made from the tractor in question and the petitioner is neither the owner nor the driver of the tractor in question and one Ajit Yadav is the owner of the tractor in question. He further submits that the petitioner has no concern at all with the alleged recovery of illicit liquor or the tractor in question and the name of the petitioner has been transpired on the basis of disclosure made by local choudidar. 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.

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.

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 and the fact that the petitioner having clean antecedent and nothing has been recovered from conscious possession of the petitioner and the name of the petitioner has been transpired on the basis of disclosure made by local choukidar, 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 District & Sessions Judge V cum Special Judge Excise-I, Biharsharif, Nalanda in connection with Kalayan Bigha PS. Case No. 52 of 2024, 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:-

1. 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.



2. 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.

3. 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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