

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74893 of 2024

Arising Out of PS. Case No.-887 Year-2024 Thana- Excise P.S. District- Aurangabad

Rakesh Kumar Son of Chhotelal Yadav R/o Vill.- Badal Bigha, P.S.-
Madanpur, District- Aurangabad.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Mukul Kumari, Advocate

For the Opposite Party/s : Mr. Kumar Ranjit Ranjan, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 22-03-2025 Heard Ms. Mukul Kumari, learned counsel for the

petitioner and Mr. Kumar Ranjit Ranjan, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Excise P.S. Case No. 887 of 2024, F.I.R dated
08.09.2024 registered for the offences punishable under
Sections 30(a) abnd 32(3) of Bihar Prohibition and Excise
Amendment Act, 2018.

3. Recovery is of 35 liters of Spirit.

4. Learned counsel for the petitioner submits that
the petitioner is innocent 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 the recovery



has been made from the motorcycle in question. He further submits that the petitioner has been made accused in the present case only 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 Bhartiya Nagarik Suraksha Sanhita. No case, whatsoever, would be made out against the petitioner under the Bihar Prohibition and Excise Act.

5. 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 three criminal antecedents of the similar nature but fairly submits on the basis of paragraph no. 3 of the bail petition that the petitioner has been acquitted in two cases and in one case he is on bail.

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 the conscious possession of the petitioner and he has been made accused 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 the learned Special Judge of Excise-II, Aurangabad in connection with Excise P.S. Case No. 887 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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