

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.89220 of 2024

Arising Out of PS. Case No.-83 Year-2022 Thana- MOTIHARI MUFASIL District- East
Champaran

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Aklu Sahani, S/O Umed Sahani, R/O Village- Lalbeghia, P.S.-Chiraiya,
District-East Champaran, Motihari

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Sharda Nand Mishra, Adv.
For the Opposite Party/s : Mr. Umesh Lal Verma, APP

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 08-01-2025 Heard Mr. Sharda Nand Mishra, learned counsel

appearing on behalf of the petitioner and Mr. Umesh Lal Verma,

learned Additional Public Prosecutor for the State.

2. The petitioner apprehends his arrest in connection
with Muffasil P.S. Case No. 83 of 2022, registered for the
offences punishable under Sections 30(a),(b),(c), 32 and 41(1)
of the Bihar Prohibition and Excise Act, 2018.

3. The allegation against the petitioner is of involved
in trade of illicit wine. The police on a tip of manufacturing
illicit wine conducted raid and recovered 40 litre country made
liquor and 200 litres of semi prepared liquor (pass) at the bank
of the river. The nearby people and the Chowkidar disclosed the
complicity of the petitioner in the crime.

4. Learned counsel appearing on behalf of the petitioner contended that admittedly, the alleged recovery has been made from the bank of the river which is an open place and easily accessible to all. Without there being any cogent material, the name of the petitioner has been implicated in this case only on suspicion. Save and except suspicion, there is no material. It is further contended that in fact, the petitioner bears four criminal antecedents, as has been disclosed in the Paragraph 3 of the application and this is the only reason due to which his name has been implicated in this case. There is various other infirmities in the search and seizure apart from non-compliance of Section 100 of the Cr.P.C.

5. On the other hand, learned counsel for the State opposed the pre-arrest bail application submitted that apart from the four criminal antecedents of the petitioner, the bar under Section 76(2) of the Bihar Prohibition and Excise Act, 2016 clearly prohibits the anticipatory bail application.

6. Regard being had to the submissions made on behalf of the parties and considering the fact that the alleged recovery has been made from an open place, coupled with the fact that nothing has been recovered from the conscious and constructive possession of the petitioner. Save and except

suspicion, there is no material and, as such, the bar provided under Section 76(20) of the Excise Act is not applicable in the present case, let the petitioner above named be released on bail, in the event of his arrest or surrender before the court below within a period of four weeks from the date of receipt/production of a copy of this order, upon furnishing bail bonds of Rs.20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of the learned Special Judge Excise Court-I, East Champaran, Motihari in connection with Muffasil P.S. Case No. 83 of 2022, subject to the conditions laid down in Section 438(2) Cr.P.C. with the further condition that one of the bailors shall be the own/close family members of the petitioner.

(Harish Kumar, J.)

Jyoti Kumari/-

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