

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.88270 of 2024**

Arising Out of PS. Case No.-457 Year-2024 Thana- MIRGANJ District- Gopalganj

Kailash Chauhan @ Kailash Prasad Son of Chandrika Chauhan Resident of
Village- Ekdanga Bazar Police Station- Mirganj, District -Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Baijnath Sah, Advocate

For the Opposite Party/s : Mr. Bhanu Pratap Singh,APP

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

2 08-01-2025 Heard Mr.Baijnath Sah, learned counsel for the

petitioner and Mr. Bhanu Pratap Singh, learned Additional

Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Mirganj P.S.Case No.457 of 2024,FIR dated
04.10.2024 registered for the offences punishable under Section
30(a) of Bihar Prohibition and Excise Amendment Act, 2022.

3. Recovery is of 1.400 liters of country made liquor.

4. Learned counsel for the petitioner submits that the
petitioner has clean antecedent. He has falsely been implicated
in the present case. Although allegation against the petitioner is
that the recovery of 1.400 liters of country made liquor has been
recovered from the house of the petitioner. Learned counsel for
the petitioner submits that the petitioner is not the exclusive



owner of the house in question and it appears from the FIR as well as the seizure list that nothing incriminating has been recovered from conscious possession of the petitioner. There is non-compliance with mandatory procedure prescribed for recovery under Section 100 of Cr.P.C. No case, whatsoever, would be made out against the petitioners under the Bihar Prohibition and Excise Act.

5. Learned A.P.P. for the State has vehemently opposed the prayer for 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) PLJR 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, petitioner has clean antecedent, nothing has been recovered from conscious possession of the petitioner and petitioner is not the exclusive



owner of the house 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 learned Addl. District and Sessions Judge-IV-cum-Exclusive Special Excise Judge-II, Gopalganj in connection with Mirganj P.S.Case No.457 of 2024, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure 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/her absence on two consecutive dates without sufficient reason, his/her 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/her 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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