

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46892 of 2019

Arising Out of PS. Case No.-261 Year-2018 Thana- BISFI District- Madhubani

RAM VINAY YADAV Son of Upendra Yadav Resident of Village - Godhaul,
P.O.- Sadullahpur, Head, P.O.- Kamtaul, P.S.- Bisfi, Gorhaul, District-
Madhubani

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Madhusudan Kumar

For the Opposite Party/s : Mr.Pushpa Sinha

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 14-08-2019

Heard learned counsel for the parties.

This is an application for grant of anticipatory bail in connection with Bisfi P.S. Case No. 261 of 2018, disclosing offences under Sections 272 and 273 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

The petitioner had earlier approached this Court by filing Cr. Misc. No. 80238 of 2018, seeking anticipatory bail, which was dismissed as withdrawn by order dated 11.01.2019, which reads thus:-

“This application for anticipatory bail arises out of Bisfi P.S. Case No. 261 of 2018 for the offence under Sections 272 and 273 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise Act,



2016.

Learned counsel for the petitioner seeks permission to withdraw this application. He contends that he has remedy of appeal under Section 89 of the Bihar Prohibition and Excise Act, 2016 against the order passed by the learned Additional Sessions Judge IInd-cum-Special Judge, Excise Act, Madhubani rejecting the petitioner's application for anticipatory bail.

In view of clear bar under Section 76(2) of the Act, possibly the anticipatory bail application filed before the Court below itself was not maintainable.

Without commenting upon whether the petitioner has such remedy of appeal or not, this application is permitted to be withdrawn with the observation that petitioner may avail such remedy as may be found available under the law.

Petitioner may take back the certified copies of the First Information Report and the order passed by the learned Additional Sessions Judge IInd-cum-Special Judge, Excise Act, Madhubani rejecting the petitioner's application for anticipatory bail from the Registry.

This application stands dismissed as withdrawn."

It appears that the petitioner had thereafter preferred an appeal, giving rise to Criminal Appeal No. (S.J.) No. 431 of



2019. Noticing the conflicting views on the question of maintainability of anticipatory bail application in cases arising out of Bihar Excise and Prohibition Act, the petitioner's case was referred to the Full Bench. The decision has been rendered by the Full Bench in case of **Ram Vinay Yadav Vs. State of Bihar**, reported in **2019 (2) PLJR 1089**. The Full Bench in case of **Ram Vinay Yadav** (supra) has held that an application for anticipatory bail in a case arising out of Bihar Excise and Prohibition Act can be maintained, despite bar under Section 76(2) of the Act, if on the basis of allegation made in the FIR no offence under the said provision is made out.

Mr. Madhusudan Kumar, learned counsel for the petitioner has submitted that even if the allegation made in the FIR is taken to be true on its face value, no offence can be said to be made out against the petitioner punishable under Section 30(a) of the Act and, therefore, he is entitled for grant of the privilege of anticipatory bail, despite the bar under Section 76(2) of the Act. He has submitted that the petitioner has no criminal antecedent. He has also submitted that the FIR does not contain any allegation of recovery of any illicit foreign liquor from any place from his conscious possession.

I have carefully perused the FIR.



It is evident from the FIR that the illicit foreign liquor was recovered from the co-accused Anil Paswan, who disclosed to the police that the same was supplied to him by the petitioner for the purpose of sale.

In view of what has been disclosed in the FIR, it cannot be said that no offence at all is made out against the petitioner to overcome the bar under Section 76(2) of the Act.

This application, therefore, cannot be maintained.

However, in the facts and circumstances, and in view of the nature of allegation, based on which the petitioner has been implicated, and considering the fact that the petitioner has no criminal antecedent, as disclosed in paragraph 3 of the application, this application is disposed of with a direction that if the petitioner surrenders before the court below within four weeks from today and seeks regular bail, his application shall be considered and disposed of on the same day.

(Chakradhari Sharan Singh, J)

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