

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32498 of 2023

Arising Out of PS. Case No.-728 Year-2021 Thana- SARAIYA District- Muzaffarpur

SANTOSH CHAUDHARY SON OF SHATRUGHAN CHAUDHARY
Resident of Village- Bakhra, P.S-Saraiya, District-Muzaffarpur

... .. Petitioner/s

Versus

THE STATE OF BIHAR Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anish Kumar Advocate

For the Opposite Party/s : Mr.Renu Kumari, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH9**

ORAL ORDER

2 24-06-2023 Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, if any, within a period of three weeks from today.

Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

The Petitioner is apprehending his arrest in connection with Saraiya P.S. Case No. 728 of 2021 dated 29.10.2021 for the offences punishable under Sections 272, 273, 284, 328, 307, 302, and 120B read with 34 of the Indian Penal Code and Sections 30(a), 37(b), 33, 36 and 34 of the Bihar Prohibition and Excise Act.

As per the prosecution case, the petitioner and the co-accused persons are alleged to have provided poisonous liquor



in a feast, which was organized on the eve of *chathi* of grandson of Mukesh Bhagat at his house, where 5-6 persons had seriously fallen ill after consuming the liquor and one person died.

Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. The petitioner is accused in ten other criminal cases which are Excise Act as stated at para 3 of the bail petition. No incriminating article has been recovered from the conscious possession of the petitioner, hence no case is made out. The other co-accused persons have already been granted bail by the Co-ordinate Bench of this Court vide order dated 11.11.2022 passed in Cr. Misc. No. 52887 of 2022. Learned Counsel has relied on the judgment of Full Bench of Hon'ble Patna High Court in the case of **Ram Vinay Yadav vs. State of Bihar reported in 2019 (2) PLJR 1089**. The Full Bench in the 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 the 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.

Learned A.P.P. for the State has vehemently opposed the prayer for anticipatory bail of the petitioner by submitting that the bar of Section 76(2) of the Act applies in this case.

Considering the aforesaid facts and circumstances of



the case as well as the nature of allegation against the petitioner, let the above named petitioner, in the event of his arrest/surrender within a period of six weeks from today, be enlarged on anticipatory bail on furnishing bail-bond of Rs. 20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of the learned court concerned, Muzaffarpur in connection with Saraiya P.S. Case No. 728 of 2021, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure, with further conditions:-

1. The petitioner is directed to remain physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, the bail bond of the petitioner is liable to be cancelled.
2. If the petitioner is found involved in similar nature of offence in future, his bail bond is liable to be cancelled.

(Chandra Prakash Singh, J)

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