

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33705 of 2023**

Arising Out of PS. Case No.-445 Year-2022 Thana- SAMASTIPUR MUFFASIL District-
Samastipur

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SUSHIL KUMAR S/o- ISHWAR RAY Village- Jitwarpur Nizamat Ps-
Samastipur Muffasil Dist- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mahendra Pratap, Advocate
For the Opposite Party/s : Mr. Nagendra Prasad, APP

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

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

Special Public Prosecutor for the State.

The Petitioner is apprehending his arrest in connection

with Samastipur Muffasil P.S. Case No. 445 of 2022 dated

08.10.2022 registered for the offences punishable under sections

30(a), 41(i), 41(ii) of the Bihar Prohibition and Excise Act.

As per the prosecution case, total 2656.800 litres of

foreign liquor was recovered from a truck and a bolero.

Learned counsel for the petitioner has submitted that

the petitioner has falsely been implicated in this case. Nothing



has been recovered from the conscious possession of the petitioner, hence no case is made out. The petitioner is neither the driver nor the owner of the said vehicle. The petitioner has no concern with the said recovery. The petitioner is also accused in two other criminal cases of similar nature as stated at para 3 of the bail petition. Learned Counsel has relied on the judgement 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, 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 learned Court concerned, Samastipur in connection with Samastipur Muffasil P.S. Case No. 445 of 2022, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure with further condition:-

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.

This application stands allowed.

(Chandra Prakash Singh, J)

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