

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 34217 of 2023**

Arising Out of PS. Case No.-522 Year-2022 Thana- PHULWARIYA District- Gopalganj

SANTOSH YADAV @ SANTOSH KUMAR YADAV S/o- PARSHURAM
YADAV Village- Madarwani Ps- Phulwariya Dist- Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr Vyas Kumar Mishra, Advocate

For the Opposite Party/s : Mr Satyendra Prasad, APP

CORAM: HONOURABLE MR JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 24-06-2023 Heard learned counsel for the petitioner and learned Additional Public Prosecutor (for brevity, **APP**) appearing for the State of Bihar.

The petitioner is apprehending his arrest in connection with Phulwariya Police Station (for brevity, **PS**) Case No 522 of 2022 dated 20.12.2022 registered for the offences punishable under Section 30 (a) of the Bihar Prohibition and Excise Act.

As per the prosecution case, 105 litres of illicit country made liquor was recovered from the two gunny bags which were on the motorcycle.

Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. The motorcycle does not belong to the petitioner, as stated in



paragraph 10 of the bail petition. It is further submitted that the motorcycle was not being driven by the petitioner at the time of alleged occurrence. The petitioner has one antecedent, as stated at paragraph 3 of the bail petition in which he is on bail. No incriminating article has been recovered from the possession of the petitioner, hence no case is made out. Learned counsel has relied on the judgment of Full Bench of of this Court in the case of ***Ram Vinay Yadav -Versus- 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 the Act can be maintained, despite the bar under Section 76 (2) of the Act, if on the basis of allegation made in the First Information Report, no offence under the said provision is made out.

Learned APP appearing for the State of Bihar 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 his furnishing bonds of Rs 20,000/- (Rupees Twenty Thousand) with two sureties of the like amount each to the satisfaction of Additional Sessions Judge II -cum- Special Judge, Excise Court No I, Gopalganj in Phulwariya PS Case No 522 of 2022, subject to all conditions as laid down under Section 438 (2) of Criminal Procedure Code.

(Chandra Prakash Singh, J)

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