

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36299 of 2023

Arising Out of PS. Case No.-33 Year-2023 Thana- RAJAOLI District- Nawada

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Vinod Yadav @ Binod Yadav Son Of Baleshwar Yadav, Resident Of Village -
Bhour, P.S. - Rajauli, Distt. - Nawada

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sheo Kumar Prasad, Advocate

For the Opposite Party/s : Mr. Upendra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

2 21-07-2023 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner apprehends his arrest in a case registered for the offences punishable under Section 30 (a) of the Bihar Prohibition and Excise Act, 2016 read with (Amendment) Act, 2018.

3. As per prosecution, the allegation levelled against the petitioner that he was coming with wine keeping on a bag on his motorcycle. During check up, the petitioner who was sat on the said motorcycle managed to flee away from the spot after leaving the motorcycle.

4. Learned counsel for the petitioner submits that petitioner is innocent and has committed no offence. He further submits that the name of the petitioner has falsely been

implicated in this case. Counsel further submits that nothing was recovered from possession of the petitioner and petitioner has no criminal antecedent of similar nature. On the point of Section 76(2) of the Bihar Prohibition and Excise Act, 2016 creates barred on grant of anticipatory bail, counsel submits that this barred is not applicable on the petitioner because no case is made out under Excise Act.

5. Learned A.P.P. for the State on the other hand submits that it is true that the said recovery has not been made from possession of the petitioner but it has been specifically mentioned in the F.I.R. that the petitioner was transporting wine on the said motorcycle. Petitioner fled away leaving the motorcycle and said bag from which wine has been recovered, the quantity of wine has been mentioned 60 litre desi *Mahua*, as such offence under section 30(a) of the Excise Act is made out as Section 30(a) of Excise Act covers both recovery as well as transportation. According to him wine was not recovered from the conscious possession of the petitioner but the allegation of transportation is there in the F.I.R.

6. In the present facts and circumstances and particularly in the light of Section 76 (2) of Bihar Prohibition and Excise Act, 2016, this Court is not inclined to extend the

privilege of anticipatory bail to the petitioner in connection with Rajauli P.S. Case No. 33 of 2023 to the satisfaction of learned Exclusive Special Excise Court-2, Nawada.

7. Accordingly, the prayer for anticipatory bail of the petitioner stands rejected.

8. However, the learned Court below shall consider the prayer for regular bail of the petitioner, if the petitioner surrenders within a period of four weeks.

9. The present order shall not cause any prejudice to the petitioner.

(Dr. Anshuman, J.)

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