

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51663 of 2022

Arising Out of PS. Case No.-331 Year-2022 Thana- BIHPUR District- Bhagalpur

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VIJAY KUMAR CHOUDHARY @VIJAY KUMAR SON OF ANIL
CHOUDHARY R/O VILL.- AULIYABAD, P.S.- JHANDAPUR, DIST.-
BHAGALPUR

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amresh Kumar Sinha, Advocate

For the Opposite Party/s : Mr. Nitya Nand Tiwary, APP

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

ORAL ORDER

5 24-02-2023 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 through virtual court

proceeding.

The Petitioner is apprehending his arrest in a case

registered for the offences punishable u/s 30(a) of the Bihar

Prohibition and Excise Act.

As per the prosecution case, in the course of patrolling

the police party got secret information that the petitioner has

brought wine by a pickup vehicle and the same is being

unloaded and is being kept in his house. Then, the police party



reached the house of the informant, after seeing the police party two persons fled away. Total 657 litres of illicit liquor was recovered.

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. The petitioner has no criminal antecedent as stated at para 3 of the bail petition. Learned counsel has submitted that no case is made out against the petitioner. 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 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. Learned APP has further submitted that the recovery is made for the house of the petitioner.



Considering the aforesaid facts and circumstances of the case as well as the recovery from the house of the petitioner, the prayer for anticipatory bail is disposed of with direction to the petitioner to surrender before the court below concerned within six weeks from today and pray for regular bail, the learned court below shall consider his prayer for regular bail on the same day without being prejudiced by this order.

(Chandra Prakash Singh, J)

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