

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65142 of 2023

Arising Out of PS. Case No.-123 Year-2023 Thana- KASMA District- Aurangabad

RAJKUMAR PRAJAPATI S/O BASUDEO PRAJAPATI R/O BOGIYA
TOLA, (BIHARIPUR), PS- MOHANPUR, DIST- GAYA (OWNER OF
HERO SPELENDER MOTOR CYCLE BEARING REGD. NO. JH02AY-
2818)

... .. Petitioner/s

Versus

THE STATE OF BIHAR PATNA

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ajay Kumar

For the Opposite Party/s : Mr.Bishweshwar Ram

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

ORAL ORDER

2 01-11-2023 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.

2. Heard learned counsel for the petitioner and learned

Additional Public Prosecutor for the State.

3. The Petitioner is apprehending his arrest in

connection with Kasma P.S. Case No. 123 of 2023, E.R. Case

No. 1028 of 2023 dated 29.07.2023 for the offence punishable

u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 35 litres of illicit

desi liquor was recovered from the motorcycle.

5. Learned counsel for the petitioner has submitted



that the petitioner has falsely been implicated in this case. The petitioner has no criminal antecedent as stated at para 3 of the bail petition. Learned counsel further submitted that the petitioner is owner of the said motorcycle but the said motorcycle was not being driven by the owner at the time of alleged occurrence. 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 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.

6. 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.

7. 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, Aurangabad in connection with Kasma P.S. Case No. 123 of 2023, E.R. Case No. 1028 of 2023 subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

(Chandra Prakash Singh, J)

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