

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71137 of 2022

Arising Out of PS. Case No.-132 Year-2019 Thana- MANJHAGARH District- Gopalganj

MD. SHAMSHER @ MOHAMAD SAMSER ALI @ SAMSER ALI Son of
Daruga Mian R/v- Mir Alipur, P.S.- Thawe, District- Gopalganj

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mohammad Sufyan
For the Opposite Party/s : Mr.Surendra Prasad Singh

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

ORAL ORDER

2 13-01-2023 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 through video-
conferencing.

The Petitioner is apprehending his arrest in a case
registered for the offences punishable u/s 30A of the Bihar
Prohibition and Excise Act.

As per the prosecution case, 420.33 litres of English
wine was recovered from the half constructed house of the co-
accused.

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. Nothing has been recovered from the possession of the petitioner. The name of the petitioner has transpired on the basis of discloser made by the co-accused. The other co-accused person has already been granted anticipatory bail *vide* order dated 03.03.2020 passed in Cr. Misc. No. 11062 of 2020. 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 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 S.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 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, Gopalganj in connection with Manjhagarh P.S. Case No. 132 of 2019, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

The application stands allowed.

(Chandra Prakash Singh, J)

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