

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68968 of 2022

Arising Out of PS. Case No.-162 Year-2021 Thana- SAHARGHAT District- Madhubani

DAYASHANKAR YADAV @ DAYASHANKAR KUMAR S/o Kari Yadav
R/o Village- Salha, P.S.- Benipatti, Distt- Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Abu Nasar, Advocate
For the Opposite Party/s : Mr. Asha Devi, APP

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

ORAL ORDER

2 25-02-2023 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.

The Petitioner is apprehending his arrest in a case registered for the offences punishable u/s 272 and 273 read with section 34 of the Indian Penal Code and section 30(a) of the Bihar Prohibition and Excise Act.

As per the prosecution case, total 90 litres of illicit liquor was recovered from two TVS motorcycles.

Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. He is not



the owner of the said motorcycle. The name of the petitioner has transpired on the disclosure of the apprehended co-accused person. Nothing has been recovered from the conscious possession of the petitioner. The petitioner has no criminal antecedent as stated in 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.

Considering the aforesaid facts and circumstances of the case as well as the material available on record, 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, Madhubani in connection with Saharghat P.S. Case No. 162 of 2021 (GR No. 2289 of 2021) subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure with following condition:-

1. The court below shall verify the criminal antecedent of the petitioner and at any stage, if it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

The application stands allowed.

(Chandra Prakash Singh, J)

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