

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71764 of 2023

Arising Out of PS. Case No.-39 Year-2023 Thana- MATIHANI District- Begusarai

Himanshu Kumar S/O Dhirendra Singh R/O Village- Hasanpur Teghra, P.S-
Teghra, Distt.- Begusarai.

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sarbottam Kumar Sarkar, Advocate

For the Opposite Party/s : Mr. Md. Iftekhar Mahmood, A.P.P.

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

ORAL ORDER

2 23-11-2023 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 Matihani P.S Case No. 39 of 2023 dated
02.04.2023 for the offences punishable u/ss 30(a), 32(3) and 41
of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 4082.400 litres of
illicit country-made liquor was recovered from six wheeler red-
yellow container standing near Mahaji Middle School.

5. Learned counsel for the petitioner has submitted



that the petitioner has falsely been implicated in this case. It is further submitted that the petitioner is neither owner of the said vehicle nor being driven by him at the time of alleged occurrence. The petitioner has no concerned with the alleged recovery. The petitioner has three criminal antecedents as stated at para 3 of the bail petition. No incriminating article has been recovered from the conscious 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, Begusarai in connection with Matihani P.S. Case No. 39 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

(Chandra Prakash Singh, J)

Nilmani/-

U		T	
---	--	---	--

