

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68943 of 2022

Arising Out of PS. Case No.-368 Year-2018 Thana- MAIRWAN District- Siwan

RAJESH CHAUDHARY S/O Mahagu Chaudhary R/O Mohalla- Lahera Toli
Makhdum Sarai, P.S- Siwan Town, District- Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Pandey, Advocate
For the Opposite Party/s : Mr. Akbar Ali, 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, 273 and 308 read
with section 34 of the Indian Penal Code and 30(a), 38(i) and
41(i) of the Bihar Prohibition and Excise Act.

As per the prosecution case, total 25.200 litres of
illicit liquor was recovered from a motorcycle bearing Chasis
No. ME4JC65CFJ7002016.

Learned counsel for the petitioner has submitted that



the petitioner has falsely been implicated in this case. The petitioner is the owner of the said vehicle. At the time of occurrence, the said motorcycle was being driven by the co-accused Manish Kumar. The petitioner was not present at the time of alleged recovery. Nothing has been recovered from the conscious possession of the petitioner. The petitioner is also accused in three criminal cases which are related to excise act 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, Siwan in connection with Mairwa P.S. Case No. 368 of 2018, 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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