

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77346 of 2023

Arising Out of PS. Case No.-25 Year-2023 Thana- KARPURIGRAM District- Samastipur

Ashwani Kumar @ Ashwani Sah Son Of Baidyanath Sah @ Baijnath R/O
Village- Ward No.9, Sambhupatti, P.S.- Karpurigram, Samastipur, District-
Samastipur, Bihar

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Madhav Kumar, Advocate

For the Opposite Party/s : Mr.Sucheta Yadav, APP

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

ORAL ORDER

2 20-12-2023 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 a case in
connection with Karpurigram P.S. Case No. 25 of 2023 dated
22.04.2023 for the offence/s punishable u/ss 420, 466, 468, 471
and 120B read with section 34 of the Indian Penal Code and
sections 30(a), 32(i)(iii), 36, 41(i)(iii) of the Bihar Prohibition
and Excise Act.

4. As per the prosecution case, total 3201.12 litres of
foreign liquor was recovered from a Truck.



5. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. No incriminating material has been recovered from the conscious possession of the petitioner. The petitioner is neither the owner nor the driver of the said vehicle. The petitioner has no concern with the alleged recovery. The name of the petitioner has transpired in the confessional statement of the co-accused Dinesh Nayan and Suman. The petitioner has two other criminal antecedents 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.

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 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, Samastipur in connection with Karpurigram P.S. Case No. 25 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

8. The application stands allowed.

(Chandra Prakash Singh, J)

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