

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74367 of 2023

Arising Out of PS. Case No.-138 Year-2022 Thana- PHENHARA District- East Champaran

Sunil Sahani Son Of Mahesh Sahani R/O Village- Mankarwa, P.S.- Phenhara,
Dist.- East Champaran

... .. Petitioner/s

Versus

The State of Bihar Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Prateek Tandon

For the Opposite Party/s : Mr.Ahmad Ali

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

ORAL ORDER

2 02-12-2023 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 connection with Phenhara P.S. Case No. 138 of 2022 dated 01.09.2022 for the offences punishable u/s 272 and 273 of the I.P.C and Section 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 10 litres of illicit liquor has been recovered from the bamboo orchard of the petitioner.

5. Learned counsel for the petitioner has submitted



that the petitioner has falsely been implicated in this case. The petitioner is accused in one more criminal case 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. The recovery was made from an open place which is accessible to anyone. 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, East Champaran at Motihari in connection with Phenhara P.S. Case No. 138 of 2022, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

(Chandra Prakash Singh, J)

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