

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72883 of 2023**

Arising Out of PS. Case No.-350 Year-2022 Thana- BARAUNI District- Begusarai

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KANHAIYA KUMAR @ KANHAIYA RAI @ KANHAIYA RAY Son of
Rajendra Singh @ Rajendra Rai @ Rajendra Ray Resident of Village-
Simariya-01 (Simariya) (Simaria), Ward No.-3, P.S.-Barauni (Chakiya OP),
District-Begusarai.

... .. Petitioner/s

Versus

THE STATE OF BIHAR Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sandip Kumar Gautam

For the Opposite Party/s : Mr.Narsingh Tanti

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

ORAL ORDER

3 19-12-2023 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 Barauni P.S. Case No. 350 of 2022 dated

28.07.2022 for the offences punishable u/s 30(a) and 41(1) of

the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 1809.720 litres of

illicit foreign liquor was recovered from a tank lorry.

5. Learned counsel for the petitioner has submitted



that the petitioner has falsely been implicated in this case. The petitioner is accused in two other criminal cases and he is on bail in both the aforesaid cases 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 petitioner is not named in the F.I.R. The name of the petitioner has sprung up in the confessional statement of the co-accused, Raushan Kumar. The other co-accused person has already been granted anticipatory bail by the Co-ordinate Bench *vide* order dated 02.12.2022 passed in Cr. Misc. No. 64316 of 2022. 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 Barauni P.S. Case No. 350 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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