

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77223 of 2023**

Arising Out of PS. Case No.-730 Year-2021 Thana- SARAIYA District- Muzaffarpur

Vishun Chaudhary @ Vishnu Kumar Chaudhary Son Of Late Laxmi Chaudhary Resident Of Village- Rupauli (AAROPUR), Ps- Saraia, Distt- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pankaj Kumar Das, Advocate

For the Opposite Party/s : Mr.Asha Devi, APP

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

ORAL ORDER

2 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 a case in connection with Saraiya P.S. Case No. 730 of 2021 dated 30.10.2021 for the offence/s punishable u/s 272, 273, 328, 307, 302, 120 read with section 34 of the IPC and sections 30(a), 30(c), 37(b) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, due to consumption of spurious liquor a person has died in village Bishambarpur and 2-3 persons are still under treatment. It is further alleged that



during the course of investigation, the informant came to know about the involvement of 11 FIR named accused persons in the sale of spurious liquor. On search, half filled bottle of 375ml whiskey and 10ml in 180ml bottle of whiskey were found from the shop of Manoj and Anoj Rai and upon search of the house-cum-shop of the accused, Ram Ekbal Sah 750 ml of imperial blue and from counter total Rs. 48.735, a passbook, empty bottles of a different brands and caps of bottles were found.

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 not named in the F.I.R. Similarly situated co-accused persons have already been granted bail by this Court *vide* order dated 02.12.2023 passed in Cr. Misc. No. 65826 of 2023. The petitioner has two 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, Muzaffarpur in connection with Saraiya P.S. Case No. 730 of 2021, 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)

guddukr/-

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

