

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71438 of 2022

Arising Out of PS. Case No.-437 Year-2022 Thana- CHIRAIYA District- East Champaran

DHARMENDRA PASWAN Son of Vikram Paswan Resident of village -
Mirpur, P.S.- Chiraiya, District - East Champaran Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Manjeet Kumar Mishra

For the Opposite Party/s : Mr.Parmanand Prasad

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

ORAL ORDER

2 03-02-
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 Special Public Prosecutor for the State.

The Petitioner is apprehending his arrest in a case registered for the offences punishable u/s 272, 273 of the IPC and 30(a) of Bihar Prohibition and Excise Act.

As per the prosecution case, 15 litres illicit country made *mahua* was recovered from the house of the petitioner.

Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioner. The petitioner has no criminal antecedent as stated at para 3 of the bail petition. Learned Counsel has relied on the judgement 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.

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. Learned APP for the State has further submitted that the recovery is made from the conscious possession of the petitioner.

Considering the aforesaid facts and circumstances of the case as well as the recovery from the conscious possession of the petitioner. Accordingly the anticipatory bail is disposed of with direction to the petitioner to surrender before the court below concerned within six weeks from today and pray for regular bail, the learned court below shall consider his prayer for regular bail on the same day without being prejudiced by this order.

(Chandra Prakash Singh, J)

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