

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75962 of 2023

Arising Out of PS. Case No.-318 Year-2020 Thana- AWTARNAGAR District- Saran

Dharmendra Rai @ Malha @ Malha Rai S/O Heera Rai R/O Village- Purvi
Balua, P.S- Doriganj, Distt.- Saran At Chapra.

... .. Petitioner/s

Versus

The State Of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dewendra Narayan Singh, Advocate

For the Opposite Party/s : Mr. Sanjay Kumar, APP

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

ORAL ORDER

2 13-12-2023 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 Awatarnagar P.S. Case No. 318 of 2020 dated 29.11.2020 for the offence/s punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 50 litres of country made liquor kept in a sack was recovered from the motorcycle.

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 motorcycle. The petitioner has no concern with the alleged recovery. The petitioner has no criminal antecedent 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, Saran at Chapra in connection with Awatarnagar P.S. Case No. 318 of 2020, 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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