

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75467 of 2023

Arising Out of PS. Case No.-408 Year-2023 Thana- NAANPUR District- Sitamarhi

ANIL MAHTO @ ANIL KUMAR Son of Harikishor Bhagat @ Hari Kishor
Mahto Resident of Village - Nanpur Jirat Tola, Nanpur Dakshini P.S. Nanpur
District- Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ratneshwar Prasad, Advocate

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

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

ORAL ORDER

2 11-12-2023 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Nanpur P.S. Case No. 408 of 2023 dated 15.08.2023 for the offences punishable u/ss 420 and 120B of the Indian Penal Code and u/ss 30(i), 32(2), (3), 36, 41(1, 2) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 3114 litres of illicit liquor was recovered from the Container (truck) and two accused persons were also apprehended.

4. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. The name of the petitioner was disclosed by the co-accused, Prabhat



Kumar. The petitioner is neither the owner nor the driver of the said Container. The petitioner has four criminal antecedent and he is on bail in the aforesaid 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 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 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.

5. 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.

6. 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, Sitamarhi in connection with Nanpur P.S. Case No. 408 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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