

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75767 of 2023

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

Nikhil Mishra S/O Vinay Mishra R/O Village- Sirsi, P.S- Nanpur, Distt.-
Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ratneshwar Prasad

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

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

ORAL ORDER

2 12-12-2023 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 Nanpur P.S. Case No. 408 of 2023 dated
15.08.2023 for the offences punishable under Sections 420, and
120B of the IPC and Sections 30(a), 32(2),(3), 36, 41 (1,2) of
the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 3114 litres of
illicit foreign liquor has been recovered from a container
bearing No. RJ0IG-7694.



5. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. The petitioner is accused in four other criminal cases out of which three cases are related to excise act 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 name of the petitioner has transpired on the confessional statement of the co-accused Prabhat Kumar. 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, 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, with further condition:-

(i). The petitioner is directed to remain physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, the bail bond of the petitioner is liable to be cancelled.

(Chandra Prakash Singh, J)

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