

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74682 of 2023

Arising Out of PS. Case No.-339 Year-2023 Thana- BARHARIA District- Siwan

Chandan Yadav S/O Om Prakash Yadav Resident Of Village-Siyadi Karn,
P.S.-Barhariya, District-Siwan

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Tiwary, Advocate

For the Opposite Party/s : Mr. Ashok Kumar Singh, A.P.P.

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

ORAL ORDER

2 05-12-2023 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 Barhariya P.S Case No. 339 of 2023 dated
03.09.2023 for the offences punishable u/ss 30(a), 38(i) and
41(i) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 481.32 litres
of illicit liquor was recovered from the truck.

5. Learned counsel for the petitioner has submitted



that the petitioner has falsely been implicated in this case. It is further submitted that the petitioner is neither the owner nor the driver of the said truck. Learned counsel has further submitted that the name of the petitioner has transpired on the basis of disclosure made by the co-accused namely, Md. Shamim and Md. Arif. The petitioner has one criminal antecedent 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. 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, Siwan in connection with Barhariya P.S. Case No. 339 of 2022, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

(Chandra Prakash Singh, J)

Nilmani/-

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