

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75993 of 2023

Arising Out of PS. Case No.-5 Year-2022 Thana- DUMARIAGHAT District- East
Champaran

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VIKARMA SAHANI Son of Raghunath Sahani Resident of village -
Banparua, P.S.- Dumariyaghat, District - East Champaran

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Abhishek Kumar
For the Opposite Party/s : Mr.Pushpa Sinha

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**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 Dumariyaghat P.S. Case No. 05 of 2022 dated
08.01.2022 for the offence/s punishable u/s 30(a), 32, 41(i) of
the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 15 litres of
country made liquor, 600 litres of semi-finished Pass, one gas
stove, two gas cylinders were recovered from the bank of the
Pokhra.



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 recovery was made from an open place that is accessible to anyone. The petitioner has no concern with the alleged recovery. Local *Chaukidar* disclosed the name of the petitioner. Similarly situated co-accused has already been granted anticipatory by the co-ordinate bench of this court bail vide order dated 21.04.2023 passed in Cr. Misc. No. 3655 of 2023. The petitioner has three criminal antecedents 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, Motihari, East Champaran in connection with Dumariyaghat P.S. Case No. 05 of 2022, 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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