

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73470 of 2022

Arising Out of PS. Case No.-399 Year-2022 Thana- DUMRA District- Sitamarhi

Nitish Kumar Son Of Ramashankar Ray R/O Village- Kauriya, Ward No.6,
P.S.- Runnisaidpur, District- Sitamarhi

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Hans Lal Kumar, Advocate

For the Opposite Party/s : Md. Iftekhar Mahmood, APP

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

ORAL ORDER

2 20-01-2023 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.

Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State through virtual court
proceeding.

The Petitioner is apprehending his arrest in a case
registered for the offences punishable u/s 30(a) of the Bihar
Prohibition and Excise Act.

As per the prosecution case, total 185.91 litres illicit
liquor of different brands was recovered from the poultry farm
of the co-accused Manoj Kumar Rai and he disclosed the name
of the petitioner as Nitish Kumar and the other co-accused



persons who were engaged in this illegal trade.

Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. Nothing has been recovered from the possession of the petitioner. The name of the petitioner has transpired on the disclosure of the co-accused Manoj Kumar Rai. The petitioner has one criminal antecedent as stated in para 3 of the bail petition in which he is on bail. 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.

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.

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, Sitamarhi in connection with Dumra P.S. Case No. 399 of 2022, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

The application stands allowed.

(Chandra Prakash Singh, J)

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