

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.77074 of 2023**

Arising Out of PS. Case No.-397 Year-2023 Thana- Excise P.S. District- Begusarai

NITISH KUMAR SON OF SUNIL SAH R/O VILLAGE- TILRATH  
BATAULI, WARD NO.15, P.S.- BARAUNI, DISTRICT- BEGUSARAI

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

**Appearance :**

|                          |   |                                                                    |
|--------------------------|---|--------------------------------------------------------------------|
| For the Petitioner/s     | : | Mr.Pushpendra Kumar Singh, Advocate<br>Smt. Divya Bharti, Advocate |
| For the Opposite Party/s | : | Mr.Suresh Prasad Singh, APP                                        |

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

ORAL ORDER

2      19-12-2023                      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    Excise P.S.    Case No. 397 of 2023 dated 08.09.2023 for the offence/s punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 144 litres of illicit liquor was recovered from the *Bathan* of the petitioner.

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 a *Bathan* which is an open place accessible to anyone. The petitioner has no concern with the alleged recovery. The petitioner has no criminal antecedent 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, Begusarai in connection with Excise P.S. Case No. 397 of 2023, 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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