

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77691 of 2023

Arising Out of PS. Case No.-72 Year-2023 Thana- CHACKMEHSI District- Samastipur

Hulka Chaudhary @ Himanshu Kumar S/O Rajeev Choudhary @ Rajiv Kumar Choudhary Village- Nimachakhaidar, Ps. Chakmehsi, Dist. Samastipur

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ranjan Kumar, Adv.

For the Opposite Party/s : Mr.Nagendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 21-12-2023 Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in a case in connection with Chakmehsi P.S. Case No. 72 of 2023 dated 08.04.2023 registered for the offences punishable u/ss 468, 471, 420, 414 read with section 34 of the Indian Penal Code and u/ss 30(a), 32, 36, 41 of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 5951.88 litres of illicit foreign liquor was recovered from one truck, two pick-up van and one magic van and one car.

4. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. The petitioner has three criminal antecedent as stated in para 3 of the



bail petition. Nothing has been recovered from the conscious possession of the petitioner, hence no case is made out against the petitioner. It is further submitted that the petitioner has no concern with the alleged recovery. Learned counsel has further submitted that the petitioner is neither the owner nor the driver of the said vehicle. 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.

5. 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.

6. 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, Samastipur in connection with Chakmehsi P.S. Case No. 72 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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