

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77242 of 2023

Arising Out of PS. Case No.-180 Year-2023 Thana- MASHRAK District- Saran

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Kishan Thakur @ Kishan Kr. Thakur Son of Sudarshan Thakur Resident of
Village - Gopalbari, P.S.- Mashrakh, District - Saran.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Avnish Kumar Singh, Advocate

For the Opposite Party/s : Mr. Anish Chandra, A.P.P.

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**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
connection with Mashrakh P.S Case No. 180 of 2023 dated
24.04.2023 for the offences punishable u/ss 30(a), 38, 32(3),
41 of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 192.06 litres
of illicit liquor was recovered behind the temple

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 was not arrested on the spot. 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 rather recovery was made from an open place, 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, Saran at Chapra in connection with Mashrakh P.S Case No. 180 of 2023, 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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