

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77874 of 2023

Arising Out of PS. Case No.-447 Year-2023 Thana- MAHUA District- Vaishali

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Mukesh Rai Son Of Laxman Rai Vill- Mahua Singh Rai Ps- Mahua Distt
-VAISHALI

... .. Petitioner/s

Versus

The State Of Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anish Kumar, Advocate

For the Opposite Party/s : Mrs. Sharda Kumari, APP

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

ORAL ORDER

2 30-11-2023 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 Mahua P.S. Case No. 447 of 2023 dated
13.07.2023 for the offence/s punishable u/ss 420, 414, 467, 468
read with section 34 of the IPC and sections 30(a), 32 (ii)(iii),
36 and 41(i)(ii) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 1277.64 litres of
foreign liquor was recovered from a container.

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 petitioner is neither the owner nor the driver of the said container. The name of the petitioner has been disclosed by apprehended persons, Manish Kumar and Vishal Kumar as local dealer of liquor. The petitioner has no concern with the alleged recovery. The petitioner has five other criminal cases 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, Vaishali at Hajipur in connection with Mahua P.S. Case No. 447 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure with further condition.

(i). The petitioner is directed to remain physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, the bail bond of the petitioner is liable to cancelled.

8. The application stands allowed.

(Chandra Prakash Singh, J)

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