

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7618 of 2024

Arising Out of PS. Case No.-352 Year-2022 Thana- DURGAWATI District- Kaimur (Bhabua)

Kundan Kumar Son Of Late Shyam Sundar Bhagat Resident Of Village-
Barji, Ps- Motipur, Distt- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Preety Kunwar, Adv.

For the Opposite Party/s : Ms. Meena Singh, APP.

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

ORAL ORDER

2 20-02-2024 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 Durgawati P.S. Case No. 352 of 2022 dated 24.11.2022 for the offences punishable u/s 19, 420, 467, 468 of the IPC and u/s 30(a), 32, 41(1)(2) of the Bihar Prohibition and Excise (Amendment) Act.

3. As per the prosecution case, total 4923.360 litres of illicit foreign liquor was recovered from the truck. On search one I Phone and one Nokia mobile were also recovered from the pocket of the co-accused Gurendra Singh (driver).

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and 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 vehicle. The said vehicle was not being driven by the petitioner at the time of the alleged occurrence. The petitioner has no concern with the alleged recovery. The petitioner has been made accused in the present case because of the recovered mobile having present no. 8409897590 is registered in the name of the petitioner but presently the petitioner is not using the same as stated in para 9 of the bail petition. 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.

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 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, Kaimur at Bhabhua in connection with Durgawati P.S. Case No. 352 of 2022, 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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