

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8862 of 2024

Arising Out of PS. Case No.-135 Year-2023 Thana- BALIGAON District- Vaishali

Rajiv Kumar S/o Late Harischandra Gupta @ Hari Chandra Sah R/o Vill -
Bahadurpur Chiknauta @ Chiknauta, P.S. - Baligaon, Dist. - Vaishali

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vaishnavi Singh, Adv.

For the Opposite Party/s : Mr.Gulnar Begum, APP

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

ORAL ORDER

2 22-02-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Baligaon P.S. Case No. 135 of 2023 dated 27.09.2023 for the offences punishable u/ss 272, 273 read with Section 34 of the Indian Penal Code and u/s 30(a), 32(2) and 41(1) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 455 litres of spirit was recovered from *Kelwani* situated behind the *bathan* of Kanhai Gupta.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The petitioner has three criminal antecedents as stated



in para 3 of the bail petition. The name of the petitioner was disclosed by local people. It is further submitted that the petitioner has no concern with the alleged recovery rather the recovery has been made from the *bathan* of the co-accused, Kanhai Gupta. Nothing has been recovered from the conscious possession of the petitioner, 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.

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, Vaishali at Hajipur in connection with Baligaon P.S. Case No. 135 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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