

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10722 of 2024

Arising Out of PS. Case No.-414 Year-2023 Thana- SAMASTIPUR MUFFASIL District-
Samastipur

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Kanhaiya @ Kanhaiya Sahni @ Krishna S/O Shankar Sahni @ Shankar
Choudhary R/O Village- Ward No. 9, Shambhupatti, P.S- Karpurigram, Distt.-
Samastipur.

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs. Namita Sharma, Adv.
Mr. Anshu Dhar Sharma, Adv.
For the Opposite Party/s : Mr. Umanath Mishra, APP

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

ORAL ORDER

2 27-02-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Muffasil P.S. Case No. 414 of 2023 dated 12.09.2023 for the offences punishable u/ss 272, 273 and 414 of the Indian Penal Code and u/ss 30(a), 36, 37, 41(2)(I) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 207.93 litres of illicit foreign liquor was recovered from a Scorpio and a Swift Dzire vehicles.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in



this case. The petitioner has no criminal antecedent as stated in para 3 of the bail petition. The name of the petitioner was disclosed by the apprehended co-accused person. The petitioner is neither the owner nor the driver of the said vehicle and the same was not being driven by the petitioner at the time of the alleged recovery. It is further submitted that the petitioner has no concern with the alleged recovery. Nothing has been recovered from the conscious possession of the petitioner, hence no case is made out. The co-accused person has already been granted anticipatory bail by the Coordinate Bench of this court vide order dated 09.11.2023 passed in Cr. Misc. No. 73865 of 2023. 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 Muffasil P.S. Case No. 414 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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