

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12644 of 2024

Arising Out of PS. Case No.-452 Year-2016 Thana- SHAHPUR PATORI District- Samastipur

Radhe Rai @ Vimal Kumar Vimal S/O Siya Ram Rai R/O VILLAGE-
MOHANPUR, PS.- PATORI (MOHANPUR O.P.), DIST.- SAMASTIPUR.

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dilip Kumar Roy, Adv.

For the Opposite Party/s : Mr.Nagendra Prasad, APP

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

ORAL ORDER

2 29-02-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Patori (Mohanpur O.P.) P.S. Case No. 452 of 2016 dated 17.11.2016 for the offences punishable u/ss 30 and 38 of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 1.10 litres of illicit foreign liquor was recovered from the possession of the co-accused, Guddu Kumar Rai.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The petitioner has one criminal antecedent as stated in para 3 of the bail petition. The petitioner is not named in the



F.I.R. The name of the petitioner has transpired in this case during the course of investigation. As per the F.I.R., the recovery has been made from the co-accused, Guddu Kumar Rai but as per the seizure list, the recovery has been made near the field of Munna Singh which creates doubt upon the prosecution case. 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. 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 Patori (Mohanpur O.P.) P.S. Case No. 452 of 2016, 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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