

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13210 of 2024

Arising Out of PS. Case No.-339 Year-2023 Thana- DANIYAWAN District- Patna

Kamlesh Mushar @ Kamlesh Manjhi Son Of Late Mangal Manjhi Resident
Of Village- Taraura, Ps- Daniyawan, Dist- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sadanand Prasad Deo

For the Opposite Party/s : Mr.Madan Kumar

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

ORAL ORDER

2 05-03-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The Petitioner is apprehending his arrest in connection with Daniyawan P.S Case No. 339/2023 dated 23.12.2023 for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 8 litres of illicit liquor was recovered from the house of the petitioner.

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. No incriminating article 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. It is further submitting that the recovery is made from the house of the petitioner.

6. Considering the aforesaid facts and circumstances of the case the instant anticipatory bail of the petitioner is not maintainable and the same is disposed of and the petitioner is directed to surrender to the Court below within six weeks from the date of this order and pray for regular bail and the Court below shall consider the prayer of the bail of the petitioner on the same day without being prejudice by this order.

(Chandra Prakash Singh, J)

Atul/-

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