

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17886 of 2024

Arising Out of PS. Case No.-422 Year-2023 Thana- BARUN District- Aurangabad

Suraj Choudhary @ Suraj Kumar, aged about 20 years (Male), Son of Chhabu Choudhary, Resident of Village-Keshopur, P.S.-Barun, District-Aurangabad (Bihar)

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner : Mr. Aman Vishal, Advocate

For the Opposite Party : Mr. Bishweshwar Ram, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

3 27-03-2024 Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Barun P.S. Case No. 422 of 2023 dated 05.09.2023 registered for the offences punishable under Sections 30(a) and 30(c) of the Bihar Prohibition and Excise (Amendment) Act, 2018.

3. As per the prosecution case, 10,000 litres of soaked mahua with jaggery, 90 kg. of jaggery, 210 litres of desi mahua liquor and utensils for manufacturing of illegal liquor were recovered from the Kesho Market near the Sone River Diyara.

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



this case. No incriminating article has been recovered from the conscious possession of the petitioner. Hence, no case under the Excise Act is made out against the petitioner. The alleged recovery is made from an open place which is accessible to anyone. Learned counsel for the petitioner 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 F.I.R., no offence under the said provision is made out. There is no compliance of Section 100 of the Cr.P.C. The petitioner has clean antecedent as stated in paragraph no. 3 of the bail application. It is further submitted that other co-accused persons have been granted anticipatory bail by a Bench of this Court vide Cr. Misc. No. 74546 of 2023 under order dated 02.12.2023.

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, 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/- (Twenty Thousand) with two sureties of the like amount each to the satisfaction of learned court concerned, Aurangabad (Bihar), in connection with Barun P.S. Case No. 422 of 2023, subject to the condition 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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