

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17255 of 2024

Arising Out of PS. Case No.-437 Year-2023 Thana- ARA MUFFSIL District- Bhojpur

Dharmendra Mahato @ Dhamendra Mahto S/O Soharai Mahto R/O Village-
Chotaki Sanadia, P.S- Muffasil, Distt.- Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Nagadeo Choubey, Adv

For the Opposite Party/s : Mr. Nitya Nand Tiwary, APP

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

ORAL ORDER

2 14-03-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The Petitioner is apprehending his arrest in connection with Ara Muffasil P.S. Case No. 437 of 2023 dated 11.10.2023 of the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act 2018.

3. As per the prosecution case, total 6 litres of illicit country made liquor was recovered from the *bag* which was kept on the motorcycle.

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 petitioner is not named in the



F.I.R. and the name of the petitioner has surfaced in this case on the basis of owner of the said vehicle. The petitioner is the owner of the said vehicle but the same was not being driven by him at the time of alleged recovery. 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.

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, Bhojpur at Ara, in connection with Ara Muffasil P.S. Case No. 437 of 2023 subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

7. This application stands allowed.

(Chandra Prakash Singh, J)

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