

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15656 of 2024

Arising Out of PS. Case No.-535 Year-2023 Thana- BARAULI District- Gopalganj

Balister Bharti @ Bailistar Bharti Son Of Chandrama Bharti Resident Of
Village - Jogapur Kothi Sareya, P.S. - Jamo Bajar, District - Siwan

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Saurabh Kumar, Adv.

For the Opposite Party/s : Mr.Satya Nand Shukla, APP

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

ORAL ORDER

2 12-03-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Barauli P.S. Case No. 535 of 2023 dated 26.12.2023 for the offences punishable u/ss 307 read with Section 34 of the Indian Penal Code and u/ss 30(a) and 41 of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 39.6 litres of illicit foreign liquor was recovered from the three vehicles. It is further alleged that the co-accused, Vicky Kumar who fired on the police party and fled away from the spot.

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 has sprung up in the confessional statement of the co-accused, Umashankar Yadav. The petitioner is not the owner 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. Learned counsel has further submitted that the specific allegation of firing is against the co-accused, Vicky Kumar. 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 material available on the record, 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, Gopalganj in connection with Barauli P.S. Case No. 535 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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