

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18211 of 2024

Arising Out of PS. Case No.-236 Year-2023 Thana- BASOPATTI District- Madhubani

MD. KALIM MANSUR @ MD. KALIM RAIN @ KALIM @ MD. KALIM
Son of Md. Abdul Mansur @ Md. Abdul Rain @ Abdul Mansur R/o Village-
Mahinathpur Jankinagar, Police Station-Basopatti, Dist-Madhubani

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bhavesh Sah, Adv

For the Opposite Party/s : Mr. Rajendra Nath Jha, APP

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

ORAL ORDER

2 18-03-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The Petitioner is apprehending his arrest in connection with Basopatti P.S. Case No. 236 of 2023 dated 26.10.2023 of the offences punishable u/s 272, 273 of the I.P.C. and 30(a) of the Bihar Prohibition and Excise Act and section 8, 21, Learned counsel for the petitioner is directed to remove the defect(s) as pointed out by the office by 22.02.2019. N.D.P.S. Act.

3. As per the prosecution case, total 1.5 kg of ganja and 18 litres of illicit Nepali Saufi liquor were recovered from a sack which was kept on the motorcycle, driven by co-accused *Rupesh Chaudhary*.



4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The said recovery of *ganja* is less than the commercial quantity. The petitioner has one criminal antecedent as stated in para 3 of the bail petition. The name of the petitioner has transpired in this case only on the basis of confessional statement of the co-accused. The petitioner is not the owner of the said vehicle and 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, Madhubani, in connection with Basopatti P.S. Case No. 236 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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