

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17575 of 2024

Arising Out of PS. Case No.-393 Year-2023 Thana- GOPALPUR District- Bhagalpur

Md. Danish @ Md. Danish Khan Son of Md. Shamshad Khan Resident of Maniyamor, Ward No.- 12, P.S.- Naugachia, District - Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Diwakar Upadhyaya, Adv

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 15-03-2024 Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

2. The Petitioner is apprehending his arrest in connection with Gopalpur(Rangra) P.S. Case No. 393 of 2023 dated 11.08.2023 of the offences punishable u/s 30(a), 32(ii) of the Bihar Prohibition and Excise Act 2018.

3. As per the prosecution case, total 382.44 litres of illicit country made foreign liquor was recovered from the *Bolero Pick-up Van*.

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 the owner of the said



vehicle but the same was not being driven by him at the time of alleged recovery. The name of the petitioner was disclosed by the co-accused *Md. Shahnawaj*. 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, Bhagalpur, in connection with Gopalpur(Rangra) P.S. Case No. 393 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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