

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21136 of 2024

Arising Out of PS. Case No.-24 Year-2024 Thana- SARAIYA District- Muzaffarpur

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Kundan Kumar S/O- Pappu Kumar @ Pappu Rai R/O- Village- Atrauliya,
P.S.- Saraiya, Dist.- Muzaffarpur.

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mr.Anand Kishore Choudhary, APP

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

ORAL ORDER

2 02-04-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Saraiya P.S. Case No. 24 of 2024 dated 11.01.2024 for the offences punishable u/ss 272, 273 read with Section 34 of the Indian Penal Code and u/ss 30(a), 32(2), 32(3), 36, 41(1), 41(2) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 3024 litres of illicit foreign liquor was recovered from the truck.

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 transpired



in this case on the basis of the confessional statement of the co-accused, Aman Kumar and Santosh Kumar. The petitioner is neither the owner nor the driver 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. Nothing has been recovered from the conscious possession of the petitioner, hence no case is made out. The co-accused person has already been granted anticipatory bail by this court vide order dated 14.03.2024 passed in Cr. Misc. No. 16703 of 2024. 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, Muzaffarpur in connection with Saraiya P.S. Case No. 24 of 2024, 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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