

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20100 of 2024

Arising Out of PS. Case No.-140 Year-2023 Thana- Excise P.S. District- Madhubani

Vijay Kumar Mishra @ Vijay Mishra Son Of Shri Sitaram Mishra R/O, P.O.
And P.S.-Arer, Distt.-Madhubani

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bimal Kumar Jha, Adv.

For the Opposite Party/s : Mr.Ramesh Chandra, APP

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

ORAL ORDER

2 29-03-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with G.R. No. 3966 of 2023 arising out of Benipatti Excise P.S. Case No. 140 of 2023 dated 18.12.2023 for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 750 ml of illicit foreign liquor was recovered from the possession of the petitioner. Police arrested the petitioner and got him seated in the vehicle, in the meantime, the co-accused Gopal Mishra along with his associates started to create nuisance and made altercation with police and got the petitioner released from



police custody and fled away.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The petitioner has two criminal antecedents as stated in para 3 of the bail petition. The name of the petitioner has transpired in this case merely on suspicion. It is further submitted that the petitioner has no concern with the alleged recovery or with the alleged offence. 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, Madhubani in connection with Benipatti Excise P.S. Case No. 140 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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