

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24313 of 2024

Arising Out of PS. Case No.-401 Year-2023 Thana- MEHSI District- East Champaran

Sanjay @ Muskan @ Sanjay Kumar, aged about 25 years (M), Son Of
Nagendra Ray, Resident Of Village- Gheghwa, P.S.- Madhuban, Dist- East
Champaran.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : M/S. Abhishek Kumar and Hemant Ray, Advocates
For the Opposite Party : Mr. Dilip Kumar No. 1, A.P.P.

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

ORAL ORDER

2 27-03-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Mehshi P.S. Case No. 401 of 2023 dated 16.12.2023 registered for the offences punishable under Sections 30(a), 32 and 41(1) of the Bihar Prohibition and Excise (Amendment) Act, 2022.

3. As per the prosecution case, total 803.88 litres of illicit foreign liquor was recovered from the Pick-up Van in question.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has been falsely implicated in this case. No incriminating article has been recovered from the



conscious possession of the petitioner. Hence, no case under the Excise Act is made out against the petitioner. The petitioner is neither the owner nor the driver of the vehicle in question. The said vehicle was not being driven by the petitioner at the time of alleged occurrence. The petitioner has no concern with the alleged recovery. The name of the petitioner has sprung up in the present case on the basis of the confessional statement of the co-accused Dinesh Giri. Except for the confessional statement of the co-accused Dinesh Giri, there is no other substantive evidence to suggest the implication of the petitioner in the present case. Learned counsel for the petitioner 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 F.I.R., no offence under the said provision is made out. There is no compliance of Section 100 of the Cr.P.C. The petitioner has clean antecedent as stated in paragraph no. 3 of the bail application. It is further submitted that other co-accused person has been granted anticipatory bail



by a Bench of this Court vide Cr. Misc. No. 9683 of 2024 under order dated 23.02.2024, annexed as Annexure-2 to the bail application.

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, 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/- (Twenty Thousand) with two sureties of the like amount each to the satisfaction of learned court concerned, Motihari, East Champaran, in connection with Mehsi P.S. Case No. 401 of 2023, subject to the condition 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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