

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26090 of 2024

Arising Out of PS. Case No.-10 Year-2024 Thana- FESHAR District- Aurangabad

Kamlesh Yadav Son Of Ram Das Yadav Resident Of Village - Thegawa Tole
Jain Bigha, P.S. - Fesar, District - Aurangabad

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ashok Singh, Adv.

For the Opposite Party/s : Mr.Asha Devi, APP

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

ORAL ORDER

2 16-04-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The Petitioner is apprehending his arrest in connection with Fesar P.S Case No. 10/2024 dated 24.01.2024 for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 15.660 litres of illicit foreign and country made liquor was recovered from the bag of the co-accused, Balwant Kumar Yadav who was on a motorcycle with the co-accused, Munna Kumar. Total 14.760 litres of illicit foreign and country made liquor was recovered from the bag of the co-accused, Rajdeo Yadav and total 17.82 litres of illicit foreign and country made liquor was recovered



from the bag of the co-accused, Sonu Kumar. Total 16.92 litres of illicit country made liquor was recovered from the bag kept on one of the seized motorcycle and total 27.64 litres of illicit country made and foreign liquor was recovered from the bag kept on another seized motorcycle. Total 9 litres of illicit country made liquor was recovered from the motorcycle which was driven by the co-accused, Ranjeet Yadav and the petitioner was a pillion rider.

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 neither the owner nor the driver of the said vehicle. No incriminating article 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 01.04.2024 passed in Cr. Misc. No. 20616 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 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, Aurangabad in connection with Fesar P.S Case No. 10/2024, 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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