

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.27066 of 2024**

Arising Out of PS. Case No.-281 Year-2023 Thana- BARURAJ District- Muzaffarpur

1. Raja @ Raja Kumar son of ramchandra Bhagat Village- Korigava @ Koriganva Ps- Baruraj Dist- Muzaffarpur
2. Gagan Bhagat @ Gagan Deo Kumar @ Gagandeo Kumar son of Lalu Bhagat @ Lal Babu Bhagat Village- Korigava @ Koriganva Ps- Baruraj Dist- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Arvind Kumar, Adv  
For the Opposite Party/s : Mr. Shyameshwar Dayal, APP

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

ORAL ORDER

2      18-04-2024                      Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Baruraj P.S Case No. 281 of 2023 dated 24.12.2023 registered for the offence punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. Learned counsel for the petitioners seeks permission to withdraw the present application for the petitioner no. 1, namely, Raja @ Raja Kumar.

4. Permission is accorded.

5. Accordingly, this bail application for the petitioner no. 1, namely, Raja @ Raja Kumar is dismissed as withdrawn.



6. As per the prosecution case, total 708.48 litres of illicit foreign liquor was recovered from the possession of the co-accused (Upendra Bhagat) in a cartoon and behind the poultry farm of Sanjeev Kumar.

7. 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 was disclosed by the co-accused *Upendra Kumar*. As per the seizure list the recovery has been made from an open place behind the Poultry farm which is accessible to anyone. 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.

8. 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.

9. 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, Muzaffarpur in connection with Baruraj P.S Case No. 281 of 2023 subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

10. This application stands allowed.

(Chandra Prakash Singh, J)

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