

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28503 of 2024

Arising Out of PS. Case No.-310 Year-2019 Thana- MANIYARI District- Muzaffarpur

Kamlesh @ Kamlesh Kumar Son of Mahesh Mahto Resident of Village -
Buzury Doar, Ward No.11, P.S. - Khanpur, District - Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Nand Kishore Prasad, APP

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

ORAL ORDER

2 22-04-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The Petitioner is apprehending his arrest in connection with Maniyari P.S. Case No. 310 of 2019 dated 20.11.2019 of the offences punishable u/s 272, 273 and 34 of the I.P.C. and Section 30(a) of the Bihar Prohibition and Excise Act 2022.

3. As per the prosecution case, total 307.420 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 two criminal antecedents as stated in para 3 of the bail petition. The name of the petitioner was



disclosed by the co-accused *Kallu Ram*. The petitioner is not the owner of the said vehicle. It is further submitted that the same vehicle is driven by the co-accused at the time of the alleged recovery. 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.

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, Muzaffarpur in connection with Maniyari P.S. Case No. 310 of 2019 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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