

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27513 of 2024

Arising Out of PS. Case No.-44 Year-2024 Thana- GAIGHAT District- Muzaffarpur

Rakesh Kumar @ Rakesh Rai S/O Late Dubri Lal Rai R/O Village- Jaganiya,
P.S. Gaighat (Benibad O.P.), Dist. - Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Santosh Kumar, Advocate

For the Opposite Party/s : Mr.Sucheta Yadav, APP

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

ORAL ORDER

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

2. The petitioner is apprehending his arrest in connection with P.S. Case No. 44 of 2024 dated 17.02.2024 for the offences punishable u/ss 25(1-b)a, 26 and 35 of the Arms Act and Sections 30(a), 36 and 41(1) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 2661.12 litres of illicit foreign liquor was recovered from the truck and Mahindra pick-up van.

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. No incriminating article has been recovered from the conscious possession of the petitioner, hence no case is made out. The petitioner is neither the owner nor the driver of the said vehicles. The name of the petitioner has sprung up in the confessional statement of the co-accused, Baijnath Rai and Karan Kumar. 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 Gaighat P.S. Case No. 44 of 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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