

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30869 of 2024

Arising Out of PS. Case No.-33 Year-2024 Thana- BAIKUNTHPUR District- Gopalganj

Shiva Rai @ Shiva Kumar Yadav S/O Jhamendra Rai @ Zamindra Ray R/O
Village- Pakaha, P.S- Baikunthpur, Distt.- Gopalganj.

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Naresh Prasad, Adv.

For the Opposite Party/s : Mr.Lakshmi Kant Sharma, APP

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

ORAL ORDER

2 24-04-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Baikunthpur P.S. Case No. 33 of 2024 dated 03.02.2024 for the offences punishable u/s 30(a)/ 41 of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 985 litres of spirit was recovered from the pick-up vehicle and the two motorcycles.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The petitioner has five criminal antecedents as stated in para 3 of the bail petition. The name of the petitioner was



disclosed by the apprehended person. The petitioner is neither the owner nor the driver of the said vehicle and the same was not being driven by the petitioner at the time of the alleged recovery. It is further submitted that the petitioner has no concern with the alleged recovery. Nothing 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 material available on the record, 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, Gopalganj in connection with Baikunthpur P.S. Case No. 33 of 2024, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure with further condition :-

(i) The petitioner is directed to remain physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, the prosecution will be at liberty to move for cancellation of his bail bond.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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