

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34925 of 2024

Arising Out of PS. Case No.-157 Year-2023 Thana- MAHUA District- Vaishali

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Mukesh Kumar @ Mukesh Das S/O BINDA DAS MOHALLA-
MIRJANAGAR, P.S.- MAHUA,DIST- VAISHALI(BIHAR)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Adv
For the Opposite Party/s : Mr. Suman Kumari Singh, APP

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

ORAL ORDER

2 26-07-2024 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner is apprehending his arrest in connection with Mahua P.S Case No. 157 of 2023 dated 18.03.2023 registered for the offence punishable u/s 272, 273, 414 and 34 of the I.P.C and 30(a), 32(ii) and 41(i) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 387.345 litres of illicit country made foreign liquor was recovered from the mango Orchard near Mirzanagar, High School where a motorcycle was parked which belonged to the petitioner.



4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The recovery has been made from an open place which is accessible to anyone. The petitioner is not named in the F.I.R. The name of the petitioner has transpired in this case on the basis of owner of the said motorcycle. The petitioner has no concern with the alleged recovery. Similarly situated co-accused has already been granted anticipatory bail by the co-ordinate bench of this court *vide* order dated 11.03.2024 passed in Cr. Misc. No. 15498 of 2024. 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 petitioners, 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 petitioners 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, 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, Vaishali, in connection with Mahua P.S Case No. 157 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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