

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35252 of 2024

Arising Out of PS. Case No.-161 Year-2023 Thana- DARPA District- East Champaran

Birendra Mukhiya @ Biren Mukhiya Son of Shankar Mukhiya Resident of
Village- Rampur, P.S.- Darpa, Dist.- East Champaran, Motihari

... .. Petitioner/s

Versus

The State of Bihar Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rajesh Kumar, Adv.

For the Opposite Party/s : Mr.Parmanand Kumar, APP

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

ORAL ORDER

2 26-07-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Darpa P.S. Case No. 161 of 2023 dated 30.12.2023 for the offences punishable u/s 414 of the Indian Penal Code and u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 30 litres of illicit country made liquor was recovered from the motorcycle.

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



disclosed by the apprehended co-accused 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. There is nothing on record except the criminal antecedent of the petitioner. The co-accused person has already been granted anticipatory bail by this court vide order dated 02.04.2024 passed in Cr. Misc. No. 21222 of 2024. 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, East Champaran, Motihari in connection with Darpa P.S. Case No. 161 of 2023, 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 bail bond of the petitioner is liable to be cancelled.*

7. The application stands allowed.

(Chandra Prakash Singh, J)

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