

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38781 of 2024

Arising Out of PS. Case No.-436 Year-2023 Thana- BAIKUNTHPUR District- Gopalganj

Shailesh Rai @Shailesh Kumar @Shailesh S/O Gautam Rai R/O Village-
Bahrapur, District- Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dharmveer Jha, Adv

For the Opposite Party/s : Mr. Khurshid Anwar, APP

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

ORAL ORDER

2 09-08-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in a case in connection with Baikunthpur P.S. Case No. 436 of 2023 dated 13.12.2023 for the offence punishable u/s 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2023.

3. As per the prosecution case, total 107.952 litres of illicit foreign liquor was recovered from the tractor and the sanitary tank near the house of the co-accused Ramayan Rai.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The name of the petitioner was disclosed by the local chowkidar. No incriminating material has been recovered from



the conscious possession of the petitioner. The petitioner is not the owner of the said vehicle and the same was not being driven by the petitioner at the time of the alleged occurrence. The petitioner has no concern with the alleged recovery. The petitioner has two criminal antecedents as stated in para 3 of the bail petition. Similarly situated co-accused has already been granted bail by the co-ordinate bench of this court *vide* order dated 20.02.2024 passed in Cr. Misc. No. 7520 of 2024. Learned counsel has submitted that no case is made out against the petitioner. 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 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 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. 436 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure, with further condition/s:-

(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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