

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38685 of 2024

Arising Out of PS. Case No.-13 Year-2024 Thana- SIDHWALIYA District- Gopalganj

Majister Mukhiya Son Of Late Sakal Mukhiya R/O Village- Sangrampur, Bin
Toli, P.S.- Sangrampur, Motihari, District- East Champaran, Bihar

... .. Petitioner/S

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Indrajeet Bhushan, Adv

For the Opposite Party/s : Mr. Anant Kumar 1, 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 connection with Sidhwaliya P.S. Case No. 13 of 2024 dated 14.01.2024 of the offences punishable u/s sections 30(a) of the Bihar Prohibition and Excise Act 2016.

3. As per the prosecution case, total 120 litres of illicit country made liquor was recovered from the two sacks which was kept in a boat and 350 litres of illicit country made liquor was recovered near the bank of the Gandak River.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The petitioner has one criminal case as stated in para 3



of the bail petition. The name of the petitioner was disclosed by the local chowkidar. The petitioner has no concern with the alleged recovery rather the recovery has been made from an open place which is accessible to anyone. Similarly situated co-accused has already been granted anticipatory bail by the co-ordinate bench of this court *vide* order dated 23.04.2024 passed in Cr. Misc. No. 29581 of 2024. No incriminating article 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 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, Gopalganj in connection with Sidhwaliya P.S. Case No. 13 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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