

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57463 of 2024

Arising Out of PS. Case No.-858 Year-2023 Thana- BANKA District- Banka

Ashish Kumar Yadav @ Ashish Kumar Son of Bhola Yadav Resident of
Village - Domuhan, P.S. and District - Banka

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dhananjay Pandey, Adv.

For the Opposite Party/s : Mr.Nitya Nand Tiwary, APP

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

ORAL ORDER

2 27-09-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The Petitioner is apprehending his arrest in connection with Banka P.S. Case No. 858 of 2023 dated 30.12.2023 of the offences punishable u/s sections 30(a) of the Bihar Prohibition and Excise Act 2016.

3. As per the prosecution case, total 150 litres of illicit country made liquor was recovered from the two motorcycles which were found in the middle of the Chandan 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 no criminal case as stated in para 3 of the bail petition. The name of the petitioner was disclosed by



the local chowkidar. The recovery has been made from an open place which is accessible to anyone. The petitioner is the owner of the seized motorcycle and the same was not being driven by him at the time of the alleged recovery. No incriminating article has been recovered from the conscious possession of the petitioner, hence no case is made out. The co-accused person has already been granted anticipatory bail by this court vide order dated 23.04.2024 passed in Cr. Misc. No. 29762 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 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, Banka in connection with Banka P.S. Case No. 858 of 2023 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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