

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76239 of 2023

Arising Out of PS. Case No.-538 Year-2023 Thana- BARH District- Patna

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RISHI KUMAR @ RISHIKESH KUMAR S/O KAPPAL PASWAN
VILLAGE- DALISHMANCHAK, PS. BARH, DIST. PATNA

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Anil Kumar Singh, Adv.

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

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

ORAL ORDER

3 08-01-2024 Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, if any, within a period of three weeks from today.

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

3. The petitioner is apprehending his arrest in a case in connection with Barh P.S. Case No. 538 of 2023 dated 21.08.2023 for the offence/s punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 33.75 litres of liquor containing in two plastic bags was recovered from the field situated near the Pipal Tree.

5. Learned counsel for the petitioner has submitted



that the petitioner has falsely been implicated in this case. No incriminating material has been recovered from the conscious possession of the petitioner. Similarly situated co-accused has been granted anticipatory bail by the Co-ordinate Bench of this Court vide order dated 28.11.2023 passed in Cr. Misc. No. 74138 of 2023. The recovery was made from an open place that is accessible to anyone. The petitioner has no concern with the alleged recovery. The name of the petitioner has transpired only on mere suspicion. The petitioner has two other criminal antecedents as stated in para 3 of the bail petition. 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.

6. 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.

7. 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, Barh, Patna in connection with Barh P.S. Case No. 538 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

8. The application stands allowed.

(Chandra Prakash Singh, J)

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