

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78857 of 2023

Arising Out of PS. Case No.-424 Year-2023 Thana- KUDHNI District- Muzaffarpur

NIRAJ KUMAR @ NISHANT SON OF NAND KISHOR RAY R/O
VILLAGE- MOLALAMA BASULI, P.S.- KUDHANI, DISTRICT-
MUZAFFARPUR

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Pranav Kumar, Adv.
Mr. Rajeev Ranjan No.II, Adv.
For the Opposite Party/s : Mr. Narsingh Tanti, APP

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

ORAL ORDER

2 04-01-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The Petitioner is apprehending his arrest in connection with Kudhani P.S. Case No. 424 of 2023 dated 11.08.2023 for the offences punishable u/ss 272, 273 read with Section 34 of the Indian Penal Code and u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 16.875 litres of illicit foreign liquor was recovered from the hut (*Madai*) situated behind the house of the petitioner and the co-accused.

4. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. The



petitioner has one criminal antecedent as stated in para 3 of the bail petition. The name of the petitioner has transpired in this case only on the confessional statement of the co-accused, Umesh Ray. Learned counsel has further submitted that the petitioner has no concern with the alleged recovery and nothing has been recovered from the conscious possession of the petitioner. The said hut does not belong to 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, Muzaffarpur in connection with Kudhani P.S. Case No. 424 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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