

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79128 of 2023

Arising Out of PS. Case No.-328 Year-2023 Thana- JAYNAGAR District- Madhubani

UPENDRA YADAV S/O LATE UTIM LAL YADAV VILLAGE- KORAHIA,
PS. JAYNAGAR, DIST. MADHUBANI.

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shailendra Kumar Jha, Adv.

For the Opposite Party/s : Mr.Asha Devi, APP

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

ORAL ORDER

2 05-01-2024 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 Jaynagar P.S. Case No. 328 of 2023 Corresponding to G.R. No. 1193 of 2023 dated 03.08.2023 for the offence/s punishable u/ss 272 and 273 of the IPC and section 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 666 litres of illicit liquor was recovered from the blackberry orchard situated at village Korahiya.



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. The recovery was made from an open place that is accessible to anyone. The petitioner has no concern with the alleged recovery. The petitioner is also accused in one more criminal case 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, Madhubani in connection with Jaynagar P.S. Case No. 328 of 2023 Corresponding to G.R. No. 1193 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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