

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79395 of 2023

Arising Out of PS. Case No.-74 Year-2023 Thana- MAHINDWARA District- Sitamarhi

Upendra Kumar @ Upendra Sah Son Of Ramdev Sah Resident Of Village -
Olipur, Sarhanchia, P.S. - Mahindrawara, District - Sitamarhi

... .. Petitioner/s

Versus

The State Of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Arvind Kumar, Adv.

For the Opposite Party/s : Mr.Shyam Bihari Singh, APP

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

ORAL ORDER

2 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 Mahindwara P.S. Case No. 74 of 2023 dated
24.05.2023 for the offence/s punishable u/ss 30(a), 32(i)(ii), 36,
41 (i)(ii) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 435.24 litres of
foreign liquor was recovered from the Scorpio vehicle.

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 petitioner is neither the owner nor the driver of the said vehicle. The petitioner has no concern with the alleged recovery. Local Chowkidar disclosed the name of the petitioner. Similarly situated co-accused has already been granted anticipatory bail by the Co-ordinate Bench of this Court vide order dated 08.08.2023 passed in Cr. Misc. No. 51421 of 2023. The petitioner has eight 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, Sitamarhi in connection with Mahindwara P.S. Case No. 74 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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