

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79943 of 2023

Arising Out of PS. Case No.-301 Year-2021 Thana- HARLAKHI District- Madhubani

MOHAMMAD MAKSOOD ALAM @ MD. MAKSOOD Son of Mohammad
Javed Alam R/O village - Rahika Insaf Chowk, Police Station - Rahika, Dist.-
Madhubani

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bhavesh Kumar Sah,Adv.

For the Opposite Party/s : Mr.Akbar Ali, APP

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

ORAL ORDER

2 08-01-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Harlakhi P.S. Case No. 301 of 2021 dated 30.08.2023 for the offences punishable u/ss 272, 273 read with Section 34 of the Indian Penal Code and u/ss 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 90 litres of illicit liquor was recovered from the motorcycle of the petitioner.

4. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. The petitioner has no criminal antecedent as stated in para 3 of the bail petition. The petitioner is not named in the F.I.R. The name



of the petitioner has surfaced in this case during the course of investigation. The petitioner is not the owner of the said motorcycle and the same was not being driven by the petitioner at the time of alleged incident. Nothing has been recovered from the conscious possession of the petitioner and the petitioner has no concern with the alleged recovery, 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, Madhubani in connection with Harlakhi P.S. Case No. 301 of 2021, 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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