

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.81990 of 2023

Arising Out of PS. Case No.-298 Year-2023 Thana- BARHARA KOTHI District- Purnia

Raj Kishore Jaiswal, Male, aged about 45 years, Son of Late Mukur Chand Jaiswal R/O Ward No. 32, Bibiganj Nay Tola, P.S.- Sadar, Dist.- Purnea

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Md Fazle Karim, Advocate

For the Opposite Party/s : Mr. Shantanu Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 12-01-2024 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 connection with Barahara P.S Case No. 298 of 2023 dated 31.07.2023 for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, 63 litres of illicit liquor was recovered from straw kept in the house of the co-accused, Virendra and Ajay Kumar. The co-accused



persons disclosed that the said liquor was given by the co-accused Pintu Jaiswal and Uday Jaiswal. It is further alleged that the a total 29.250 litres of illicit foreign liquor was recovered from the house of the co-accused Pintu Jaiswal and Uday Jaiswal and a car parked in front of the gate was seized.

5. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. It is further submitted that the petitioner is the owner of the said vehicle but the said vehicle was not being driven by the petitioner at the time of alleged occurrence. The petitioner has no criminal antecedent as stated at para 3 of the bail petition. No incriminating article has been recovered from the conscious possession of 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.

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 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, Purnea in connection with Barahara P.S Case No. 298 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

(Chandra Prakash Singh, J)

Nilmani/-

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