

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80724 of 2023

Arising Out of PS. Case No.-938 Year-2021 Thana- AGAMKUAN District- Patna

Sanjay Mahto Son of Late Shiva Mahto R/O Village- Chhoti Pahari, P.S.-
Agamkuan, Dist.- Patna

... .. Petitioner/s

Versus

The State of Bihar Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Jay Ram Prasad
For the Opposite Party/s : Mr.Mohammed Arif

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

ORAL ORDER

2 11-01-2024 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 Agamkuan P.S Case No. 938 of 2021 dated
02.10.2021 for the offences punishable u/ss 30(a) and 36 of
the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 10 litres of
illicit liquor was kept in two bags recovered from the open
field.



5. 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 at para 3 of the bail petition. The co-accused has already granted anticipatory bail by the Coordinate Bench of this court vide order dated 10.08.2023 passed in Cr. Misc No. 46346 of 2023. 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, Patna City in connection with Agamkuan P.S Case No. 938 of 2021, 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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