

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80063 of 2023

Arising Out of PS. Case No.-689 Year-2023 Thana- MALSALAMI District- Patna

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MUKESH KUMAR Son of Sanjivan Ray @ Sajivan Ray R/o Nuruddin Ganj
Ghat (Ghat Kinnare), P.S. - Malsalami, Distt. - Patna

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Nityanand Kumar

For the Opposite Party/s : Mr.Ajay Kumar No. 2

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

ORAL ORDER

2 09-01-2024 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 Malsalami P.S. Case No. 689 of 2023 dated

03.10.2023 for the offences punishable u/s 30(a) and 36 of the

Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 20 litres of illicit

liquor has been recovered from the bag of the co-accuseds and

10 litres of country-made liquor was recovered from the bag

which is alleged to be thrown by the petitioner.



5. 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 at para 3 of the bail petition. The apprehended person disclosed the name of the petitioner. 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 in connection with Malsalami P.S. Case No. 689 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

(Chandra Prakash Singh, J)

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