

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.83054 of 2023

Arising Out of PS. Case No.-707 Year-2023 Thana- Excise P.S. District- Aurangabad

Ganesh Kumar Kushwaha Son Of Mahesh Prasad Kushwaha R/O Village-
Matpa, P.S.- Kutumba, Dist.- Aurangabad

... .. Petitioner/s

Versus

The State of Bihar Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mukul Kumari

For the Opposite Party/s : Mr.Anil Kumar Singh No. 1

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

ORAL ORDER

2 19-01-2024 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 Excise P.S. Case No. 707 of 2023, G.R. No.
1249/2023 dated 07.09.2023 for the offences punishable u/s
30(a) and 32(3) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 1.4 litres of illicit
liquor was recovered from the motorcycle which was driven by
the co-accused Kartik Kumar and the pillion rider, Chhotu
Kumar Kushwaha.



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. No incriminating article has been recovered from the conscious possession of the petitioner, hence no case is made out. The petitioner is the owner of the said vehicle but the said vehicle was not being driven by the petitioner at the time of the alleged occurrence. 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, Aurangabad in connection with Excise P.S. Case No. 707 of 2023, G.R. No. 1249/2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

(Chandra Prakash Singh, J)

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