

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85254 of 2023

Arising Out of PS. Case No.-801 Year-2023 Thana- GOPALGANJ TOWN District-
Gopalganj

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Guddu Kumar Sah @ Guddu Sah S/O Jata Sah R/O Village- Nawada
Rajokhar, P.S- Nagar Gopalganj, Distt.- Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Lokesh Kumar Singh
For the Opposite Party/s : Mr.Damodar Prasad Tiwary

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

ORAL ORDER

2 24-01-2024 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 Gopalganj Town P.S. Case No. 801 of 2023
dated 09.10.2023 for the offences punishable u/s 30(a), 30(c), 33
and 41(1) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 800 litres of spirit
was recovered from the Mahindra Jito which was being driven
by the co-accused Deepak Kumar Sharma, who disclosed that
the said spirit was loaded by the petitioner which was given by



Sushil Kumar Ojha, Manager of Narayani Logistic. Further, 200 litres of spirit was recovered from the house of the petitioner where the apprehended persons disclosed the name of the petitioner. Further, the apprehended persons Sushil Kumar Ojha and Deepak Kumar also disclosed the name of the petitioner.

5. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. The petitioner is accused in four other criminal cases 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 neither the owner nor the driver of the said vehicle. 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, Gopalganj in connection with Gopalganj Town P.S. Case No. 801 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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