

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85269 of 2023

Arising Out of PS. Case No.-112 Year-2022 Thana- DARBHANGA SADAR District-
Darbhanga

MD. SHAHNAWAJ Son of Md. Shahabuddin R/o vill - Shimwara, P.S. -
Patepur, Distt. - Vaishali

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mrs.Rupa Kumari, Adv.

For the Opposite Party/s : Mr.Md. Iftekhar Mahmood, APP

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

ORAL ORDER

2 24-01-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Sadar P.S. Case No. 112 of 2022 dated 08.03.2022 for the offences punishable u/ss 30(a), 36 and 41(i) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 2223 litres of whiskey and other articles were recovered from a container truck which was being driven by the co-accused Rashid Ahmad.

4. 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 in para 3 of the bail petition. The name of the petitioner has sprung up in the



confessional statement of the co-accused, Rashid Ahmad. The petitioner is neither the owner nor the driver of the said vehicle. It is further submitted that the petitioner has no concern with the alleged recovery. Nothing has been recovered from the conscious possession of the petitioner, hence no case is made out against the petitioner. 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.

5. 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.

6. 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, Darbhanga in connection with Sadar P.S. Case No. 112 of 2022, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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