

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85777 of 2023

Arising Out of PS. Case No.-484 Year-2023 Thana- Excise P.S. District- Madhepura

Sonu Gupta @ Sonu Sah Son Of Shivshankar Sah Resident Of Village-
Singheswar, Ward No. 03, Ps- Singheswar Distt- Madhepura

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dinesh Prasad Verma, Adv.

For the Opposite Party/s : Mr.Akshay Lal Pandit, APP

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

ORAL ORDER

2 29-01-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Madhepura Excise P.S. Case No. 484 of 2023 dated 24.06.2023 for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 350 litres of illicit wiscof cough syrup was recovered from a Tata Nexon and total 150 litres of illicit wiscof cough syrup was also recovered from an Alto K 10.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The petitioner has five criminal antecedents in which



he is on bail as stated in para 3 of the bail petition. The name of the petitioner was disclosed by the apprehended persons. The petitioner is not the owner of the said vehicles and the same was not being driven by the petitioner at the time of the alleged recovery. 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. Learned counsel has further submitted that the present case comes under the purview of the N.D.P.S. Act but the same has been lodged under the Excise Act. The seized contraband



containing codeine is of commercial quantity. Learned APP for the State also placed reliance on the judgment in the case of ***Hira Singh and Anr. Vs. Union of India and Anr, (2020)20 Supreme Court Cases 272*** of Hon'ble Apex Court has held that "weight of entire materials/ mixture along with neutral material is to be considered for ascertainment of whether the quantity is "small quantity" or "commercial quantity". Total 500 litres of illicit wiscof cough syrup was recovered from the vehicles of the petitioner. The petitioner was identified by the apprehended person in course of fleeing away.

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, Madhepura in connection with Madhepura Excise P.S. Case No. 484 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure with further condition :-

(i) *The petitioner is directed to remain*



physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, the prosecution will be at liberty to move for cancellation of his bail bond.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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