

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2484 of 2024

Arising Out of PS. Case No.-203 Year-2021 Thana- Excise P.S. District- Samastipur

Ganesh Mahto S/O Late Jogindra Mahto VILLAGE- BARBETTA, WARD
NO. 4, PS. MUSARIGHARARI, DIST. SAMASTIPUR.

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dilip Kumar Roy
For the Opposite Party/s : Mr.Shyam Bihari Singh

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

ORAL ORDER

2 02-02-2024 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. 203 of 2021, dated 16.07.2021 for the offences punishable under Section 30(a) of the Bihar Prohibition and Excise Amendment Act, 2018.

4. As per prosecution case, total 2 litres of country made liquor has been recovered from the varamda of house of the petitioner.

5. Learned counsel for the petitioner has submitted



that the petitioner is innocent and has falsely been implicated in this case. The petitioner has no criminal antecedent as stated in 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 against the petitioner. The petitioner was neither apprehended on the spot nor was found near the place of 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 APP 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, Samastipur in connection with Excise P.S. Case No. 203 of 2021, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

8. The application stands allowed.

(Chandra Prakash Singh, J)

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