

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5663 of 2024

Arising Out of PS. Case No.-167 Year-2023 Thana- VISHAMBHARPUR District- Gopalganj

Raj Kumar Yadav S/O Sheopujan Yadav R/O Village- Khem Matihaniya, P.S-
Vishambharpur, Distt.- Gopalganj.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shovendra Kumar

For the Opposite Party/s : Mrs. Sharda Kumari

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

ORAL ORDER

2 16-02-2024 Learned counsel for the petitioner is directed 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 Vishambharpur P.S. Case No. 167 of 2023,
dated 23.08.2023, for the offences punishable under Sections
272, 273 of the Indian Penal Code and under section 30(a) of
the Bihar Prohibition and Excise Amendment Act, 2022.

4. As per the prosecution case, total 6.200 litres of
country made liquor has been recovered from the bush.

5. Learned counsel for the petitioner has submitted



that the petitioner is innocent and has falsely been implicated in this case. The petitioner has two criminal antecedents as stated in para 3 of the bail petition in which both cases, he is on bail. The name of the petitioner has sprung up in the confessional statement of the co-accused Nathuni Ram. No incriminating material has been recovered from the conscious possession of the petitioner, hence no case is made out against the petitioner. The petitioner has been made accused in the present case because he is registered owner of the motorcycle but at the time of the alleged occurrence, the said motorcycle was not being driven by 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.

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, Gopalganj, Bihar in connection with Vishambharpur P.S. Case No. 167 of 2023 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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