

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86620 of 2023

Arising Out of PS. Case No.-403 Year-2023 Thana- Excise P.S. District- Begusarai

Santosh Kumar, aged about 40 years, Gender- Male, Son of Late Rajendra Singh R/O Villag- Amrar, P.S.- Singhaul, Dist.- Begusarai

... .. Petitioner/s

Versus

THE STATE OF BIHAR.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Amrendra Kumar, Advocate.

For the Opposite Party/s : Mr. Kanhiya Kishor, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 30-01-2024 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 Excise P.S Case No. 403 of 2023 dated 12.09.2023 for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 579.240 litres of illicit liquor was recovered from the *bathan* of the co-accused Santosh Kumar.



5. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The said recovery was made from the *bathan* of the co-accused person. The petitioner has five criminal antecedents 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. 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, Begusarai in connection with Excise P.S Case No. 403 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure, with further conditions:

(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 bail bond of the petitioner is liable to be cancelled.

(Chandra Prakash Singh, J)

Nilmani/-

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