

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5651 of 2024

Arising Out of PS. Case No.-597 Year-2021 Thana- RAJAOLI District- Nawada

Mithun Mushar @ Mithun Kumar Son Of Chetu Mushar Resident Of Village
- Jobkala, P.S.- Rajouli, District- Nawada

... .. Petitioner/S

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Man Mohan Kumar, Adv.

For the Opposite Party/s : Ms. Shaheen Begum, APP.

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

ORAL ORDER

2 16-02-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in a case in
connection with Rajaouli P.S. Case No. 597 of 2021 dated
18.11.2021 for the offence punishable u/s 30(a)(c) of the Bihar
Prohibition and Excise Act.

3. As per the prosecution case, total 10 litres of illicit
country made liquor was recovered from the bush.

4. Learned counsel for the petitioner has submitted that
the petitioner is innocent and has falsely been implicated in this
case. No incriminating material has been recovered from the
conscious possession of the petitioner. The recovery was made
from an open place that is accessible to anyone. The petitioner



has no concern with the alleged recovery. The petitioner has identified by local *chaukidar*. The similarly situated co-accused has been enlarged on anticipatory bail vide order dated 13.01.2023 in Cr. Misc. No. 71414 of 2023 as per Annexure-3. The petitioner has no criminal antecedent as stated in para 3 of the bail petition. Learned counsel has submitted that 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 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 material available on record, 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, Nawada in connection with Rajouli P.S. Case No. 597 of 2021, 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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