

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53868 of 2025

Arising Out of PS. Case No.-40 Year-2024 Thana- KHAGARIA RAIL P.S. District- Khagaria

Birbal Yadav S/O Bijendra Yadav R/O Vill.- Hira Tola, P.S.- Sahebpur Kamal,
Dist.- Begusarai.

... .. Petitioner/s

Versus

The State of Bihar Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ram Sumiran Rai

For the Opposite Party/s : Mr.Rajesh Kumar

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

ORAL ORDER

2 12-09-2025 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Khagaria Rail P.S. Case No. 40 of 2024 dated 16.04.2024 for the offence/s punishable u/ss 353 and 307 read with Section 34 of the Indian Penal Code, Section 27 of the Arms Act, Section 141 of the Railway Act and Section 30(a) and 45 of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 106.2 litres of illicit foreign liquor was recovered from the bag. Further, two empty cartridges were recovered from the place of occurrence.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in



this case. The petitioner has nine criminal antecedents and in all the aforesaid cases he is on bail as stated in para 3 of the bail petition. The petitioner is not named in the F.I.R. The name of the petitioner has sprung up in the confessional statement of the co-accused persons, Gaurav Kumar, Sanni Kumar and Kanhaiya Kumar. The other co-accused person has already been granted anticipatory bail by this court *vide* order dated 04.10.2024 passed in Cr. Misc. No. 59354/2024. 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.

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 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, Khagaria in connection with Khagaria Rail P.S. Case No. 40 of 2024, subject to conditions as laid down under section 482(2) of the B.N.S.S, 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 bail bonds of the petitioner is liable to be cancelled.

7. This application stands allowed.

(Chandra Prakash Singh, J)

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