

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22745 of 2019

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Kaju Kumar @ Sunny Kumar Srivastava Son of Mohan Prasad, Resident of
Village- Mehsual (Bhim Singh Gali), Ward No. 24, P.S. Sitamarhi, District-
Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The District Magistrate, Sitamarhi.
4. The Superintendent of Police, Sitamarhi.
5. The Sub Inspector Excise, Sitamarhi.
6. The A.S.I. Cum SHO of Mehsaul O.P. Police Station, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Birendra Kumar, Adv.
For the Respondent/s : Mr.Lalit Kishore (AG)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

2 21-11-2019 Heard learned counsel for the petitioner and learned
counsel for the respondents.

Petitioner has prayed for the following reliefs:-

“i. For issuance of appropriate writ/direction/order in
the nature of mandamus for deciding the validity of
Section 76(2) of Bihar Prohibition and Excise Act,
2016 inspite of bar created under Section 76(2) of



Bihar Prohibition and Excise Act, 2016 even then such an application under Section 438 Cr.P.C. for anticipatory bail is maintainable or not.

(ii) For issuance of appropriate writ/direction/order in the nature of certiorari for quashing the order dated 29.07.2019 passed in Cri. Misc. No. 46758 of 2019 by which learned Single Judge failed to appreciate that the Anticipatory Bail Application under Bihar Prohibition & Excise Act, 2016 is maintainable which has already been decided by this Court in Criminal Appeal (S.J.) No. 431 of 2019 (Ram Vinay Yadav Vs. The State of Bihar), reported in 2019 (3) BLJ, Page-858 but against the said order and judgment the Hon'ble Single Judge passed the order which is not sustainable in the eye of law and is fit to be set aside.

(iii) For issuance of appropriate writ/direction/order in the nature of mandamus commanding that the anticipatory bail application under Section 76(2) of Bihar Prohibition and Excise Act, 2016 is maintainable or not and in this context Full Bench of this Hon'ble Court has already held that if a Bench of coordinate jurisdiction disagree with another Bench of coordinate jurisdiction whether on the basis of different arguments or otherwise on a question of law, it is appropriate that matter be referred to larger Bench for resolution of the issue rather than to leave to conflicting judgments to operate creating confusion.

(iv) For issuance of appropriate writ/direction/order in the nature of mandamus deciding the criteria granting



for Anticipatory Bgail before this Court as well as all the court of the State of Bihar due to which uniformity in deciding the Anticipatory Bail has been enforceable.”

We find that the issue presently raised is pending consideration in a Special Leave Petition before the Hon’ble Apex Court.

As such we refrain from passing any order at this stage.

Petition stands disposed of with liberty to the petitioner to approach the Hon’ble Apex Court for redressal of grievances.

(Sanjay Karol, CJ)

(Dinesh Kumar Singh, J)

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