

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79954 of 2023

Arising Out of PS. Case No.-857 Year-2023 Thana- MUZAFFARPUR SADAR District-
Muzaffarpur

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Dinesh Gupta S/O Mahesh Gupta R/O Village- Naubatpur, P.S- Naubatpur,
Distt.- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 80720 of 2023

Arising Out of PS. Case No.-857 Year-2023 Thana- MUZAFFARPUR SADAR District-
Muzaffarpur

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MITHLESH SINGH S/O- BASANT SINGH R/O VILLAGE - KANHAULI
BISUNDATT, P.S.- MITHANPURA, DISTRICT - MUZAFFARPUR.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

(In CRIMINAL MISCELLANEOUS No. 79954 of 2023)

For the Petitioner/s : Mr.Anish Kumar

For the Opposite Party/s : Mr.Nitya Nand Tiwary

(In CRIMINAL MISCELLANEOUS No. 80720 of 2023)

For the Petitioner/s : Mr.Anish Kumar

For the Opposite Party/s : Mr.Nitya Nand Tiwary

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

ORAL ORDER

2 18-12-2023 Learned counsel for the petitioners 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 petitioners and

learned Additional Public Prosecutor for the State.



3. The petitioners are apprehending their arrest in connection with Sadar P.S. Case No. 857 of 2023 dated 31.08.2023 registered for the offence punishable under Sections 467, 468, 471, 420 and 120B of the Indian Penal Code and Sections 30(a), 32(i)(ii)(iii), 36 and 41 (i)(ii) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 5421.960 litres of foreign liquor was recovered from a truck and two pick up vans standing in the godown of the accused Narayan Mahto and two persons were apprehended on the spot who disclosed the name of the petitioners.

5. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. The petitioners are neither the owner nor the driver of the said vehicle. The petitioner (Dinesh Gupta) is accused in two other criminal cases whereas the petitioner (Mithlesh Singh) has no criminal antecedent as stated in para 3 of the bail petition. No incriminating article has been recovered from the conscious possession of the petitioners, 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 petitioners 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 petitioners, let the above named petitioners, in the event of their 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) each with two sureties of the like amount each to the satisfaction of learned Court concerned, Muzaffarpur in connection with Sadar P.S. Case No. 857 of 2023, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

8. This application stands allowed.

(Chandra Prakash Singh, J)

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