

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77978 of 2023**

Arising Out of PS. Case No.-561 Year-2023 Thana- DARBHANGA SADAR District-
Darbhanga

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MANISH MAHTO Son of Late Manju Mahto Resident of village - Ganj
Bajitpur, Police Station - Bahadurpur, District - Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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with
CRIMINAL MISCELLANEOUS No. 84151 of 2023

Arising Out of PS. Case No.-561 Year-2023 Thana- DARBHANGA SADAR District-
Darbhanga

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Gopal Mahto Son of late Manju Mahto Resident of Village - Ganj Bajitpur,
Police Station- Bahadurpur, District- DArbhanga.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 77978 of 2023)

For the Petitioner/s : Mr.Nilendu Kumar Choudhary, Adv.

For the Opposite Party/s : Mr.Raj Ballabh Singh, APP

(In CRIMINAL MISCELLANEOUS No. 84151 of 2023)

For the Petitioner/s : Mr.Nilendu Kumar Choudhary, Adv.

For the Opposite Party/s : Mr.Tarun Prasad Mandal, APP

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

ORAL ORDER

2 21-12-2023 Heard learned counsel for the petitioners and learned

Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in a case

in connection with Sadar P.S. Case No. 561 of 2023 dated

05.04.2023 registered for the offences punishable u/ss 420, 467,



468 read with Section 34 of the Indian Penal Code and u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 824.115 litres of liquor was recovered from two vehicles which was parked in the glass factory. Two persons were apprehended on the spot.

5. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. The petitioner Manish Mahto has two criminal antecedent whereas the petitioner Gopal Mahto has no criminal antecedent as stated in para 3 of the bail petition. The name of the petitioners has sprung up in the confessional statement of the co-accused, Gulab Kumar and Ravi Kumar who were apprehended from the spot. Nothing has been recovered from the conscious possession of the petitioners rather the recovery has been made from the gate of the glass factory which was opened that is accessible to anyone hence, no case is made out against the petitioners. 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.

6. 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 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, Darbhanga in connection with Sadar P.S. Case No. 561 of 2023, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

7. This application stands allowed.

(Chandra Prakash Singh, J)

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