

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23611 of 2024

Arising Out of PS. Case No.-179 Year-2023 Thana- ARER District- Madhubani

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1. VIJAY KUMAR MISHRA @ VIJAY MISHRA SON OF SHRI SITARAM MISHRA R/O, P.O. AND P.S.-ARER, DISTT.-MADHUBANI
 2. GOPAL MISHRA SON OF SHRI PREM CHANDRA MISHRA R/O, P.O. AND P.S.-ARER, DISTT.-MADHUBANI

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bimal Kumar Jha, Adv.

For the Opposite Party/s : Mr. Ramesh Chandra, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 08-04-2024 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 Arer P.S. Case No. 179 of 2023 dated 20.12.2023 for the offence/s punishable u/ss 272, 273, 341, 323, 353 and 504 read with section 34 of the IPC and 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 750 m.l. of illicit foreign liquor was recovered from the possession of the co-accused and he was apprehended by the police party. Thereafter, the petitioners and the co-accused persons started creating nuisance in discharging of official duty and got the accused person released from the police custody and fled away.



4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioners. The petitioner no. 1 has two and the petitioner no. 2 has four other criminal antecedents as stated in para 3 of the bail petition. No case u/s 353 of the IPC is made out against the petitioners. Learned counsel has submitted that no case is made out against the petitioners. Learned Counsel has relied on the judgment of Full Bench of the 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 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 material available on the record, 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 the



learned court concerned, Madhubani in connection with Arer P.S.
Case No. 179 of 2023, 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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