

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54372 of 2024

Arising Out of PS. Case No.-35 Year-2024 Thana- Bahera District- Gaya

Mohit Kumar Son Of Manoj Chaudhary Resident Of Village - Amin, P.S. -
Hunterganj, District - Chatra (Jharkhand)

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Sinha, Advocate

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

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

ORAL ORDER

2 20-09-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The Petitioner is apprehending his arrest in connection with Bahera P.S Case No. 35 of 2024 dated 12.05.2024 for the offences punishable u/ss 147, 148, 149, 341, 323, 325, 326, 307, 332, 333, 353, 414, 420, 467, 468 and Section 27 of the Arms Act and Sections 30(a), 41, 45 of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, the petitioner and the co-accused persons are alleged to have formed an unlawful assembly and made hindrance in discharging the official duty. They also assaulted the police party with lathi, danda and stones causing injuries to them. It is further alleged that the co-accused,



namely, Santosh Kumar fired on the police personnel which did not hit any one and thereafter police recovered four motorcycles, two mobiles and two empty cartridges from the spot and 14 litres of illicit country made liquor was also recovered from the motorcycles.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The petitioner was not apprehended from the spot. No incriminating article has been recovered from the conscious possession of the petitioner, hence no case is made out. The petitioner has no criminal antecedent as stated in para 3 of the bail petition. The co-accused person has been granted regular bail by this Court vide order dated 03.07.2024 passed in Cr. Misc. No. 46430 of 2024. 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, Gaya, in connection with Bahera P.S Case No. 35 of 2024, 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)

Aman Kumar/-

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