

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85994 of 2023

Arising Out of PS. Case No.-311 Year-2023 Thana- GAIGHAT District- Muzaffarpur

Vijay Ray @ Vijay Kumar Ray @ Vijay Kumar Son Of Mahendra Ray
Resident Of Village- Madhaiya Pirapur, P.S. Piar, District- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Hari Kishore Thakur

For the Opposite Party/s : Mr.Dr.Mrityunjaya Kr.Gautam

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

ORAL ORDER

2 25-01-2024 Learned counsel for the petitioner 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 petitioner and learned Additional Public Prosecutor for the State.

3. The Petitioner is apprehending his arrest in connection with Gaighat P.S. Case No. 311 of 2023 dated 08.08.2023 for the offences punishable u/s 272, 273, 420, 467, 468 and 471 read with 34 of the IPC and Sections 30(a), 32, 36 and 41(1) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 3782.880 litres of illicit liquor has been recovered from the cement godown.

5. Learned counsel for the petitioner has submitted



that the petitioner has falsely been implicated in this case. The petitioner has no criminal antecedent as stated at para 3 of the bail petition. No incriminating article has been recovered from the conscious possession of the petitioner, hence no case is made out. The petitioner was not found sitting in the Honda Santro car. The petitioner is neither the owner nor the driver of the said vehicle. The said godown belongs to the co-accused Mrityunjay Jha. 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 petitioner 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



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, Muzaffarpur in connection with Gaighat P.S. Case No. 311 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

(Chandra Prakash Singh, J)

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