

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.84662 of 2023

Arising Out of PS. Case No.-658 Year-2023 Thana- BIHPUR District- Bhagalpur

1. Kare @ Kamakhiya Mishra @ Kamakhiya Kumar Son Of Navin Mishra
R/O Village- Auliabad, P.S.- Jhandapur, Dist.- Bhagalpur
2. Amit Mishra @ Amit Kumar Mishra Son Of Subhash Mishra R/O Village-
Auliabad, P.S.- Jhandapur, Dist.- Bhagalpur

... .. Petitioner/s

Versus

The State Of Bihar Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rajive Ranjan Singh, Advocate

For the Opposite Party/s : Mr.Tapeshwar Sharma, APP

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

ORAL ORDER

2 03-01-2024 Heard learned counsel for the petitioners and learned
counsel for the State.

2. Learned counsel for the petitioners seeks permission
to withdraw the present application for the petitioner no. 1 i.e.
Kare @ Kamakhiya Mishra @ Kamakhiya Kumar.

3. Permission is accorded.

4. Accordingly, the present application for the
petitioner no. 1 i.e. Kare @ Kamakhiya Mishra @ Kamakhiya
Kumar is dismissed as withdrawn.

5. The petitioner no. 2 is apprehending his arrest in a
case in connection with Bihpur (Jhandapur) P.S. Case No. 658
of 2023 dated 24.10.2023 for the offence/s punishable u/s 30(a)



of the Bihar Prohibition and Excise Act.

6. As per the prosecution case, total 2.5 litres of illicit liquor was recovered by the police personnel which was allegedly thrown by the petitioner.

7. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. No incriminating material has been recovered from the conscious possession of the petitioner. The recovery was made from an open place that is accessible to anyone. The petitioner has no concern with the alleged recovery. The name of the petitioner has surfaced only on mere suspicion. The petitioner no. 2 is also accused in one more criminal case as stated in para 3 of the bail petition. Learned counsel has submitted that no case is made out against the petitioner. 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 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.



8. 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.

9. Considering the aforesaid facts and circumstances of the case as well as the material available on record, let the above named petitioner no. 2 i.e. Amit Mishra @ Amit Kumar Mishra, 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, Bhagalpur in connection with Bihpur (Jhandapur) P.S. Case No. 658 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

10. The application for the petitioner no. 2 i.e. Amit Mishra @ Amit Kumar Mishra stands allowed.

(Chandra Prakash Singh, J)

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