

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1797 of 2024

Arising Out of PS. Case No.-418 Year-2023 Thana- WARISNAGAR District- Samastipur

Gena Mahto S/O Shravan Mahto R/O Village-Raipur, Gohi bishanpur, p.s.-
Waris Nagar, District-Samastipur

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Raja Ram Mishra, Adv.

For the Opposite Party/s : Mr.Sanjay Kumar Pandey, APP

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

ORAL ORDER

2 01-02-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Waris Nagar P.S. Case No. 418 of 2023 dated 17.11.2023 for the offences punishable u/ss 272 and 273 of the Indian Penal Code and u/s 30(a)(c) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 440 litres of illicit country made liquor and other utensils for preparing country made liquor were recovered from the house of the co-accused, Manoj Kumar Mahto. It is further alleged that the petitioner and the co-accused persons are indulged in illegal business of liquor.

4. Learned counsel for the petitioner has submitted



that the petitioner is innocent and has falsely been implicated in this case. The petitioner has no criminal antecedent as stated in para 3 of the bail petition. The name of the petitioner was disclosed by local people. It is further submitted that the petitioner has no concern with the alleged recovery rather the recovery has been made from the house of the co-accused person. Nothing has been recovered from the conscious possession of the petitioner, hence 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 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, Samastipur in connection with Waris Nagar P.S. Case No. 418 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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