

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58360 of 2022

Arising Out of PS. Case No.-763 Year-2022 Thana- TURKAULIYA District- East
Champaran

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1. JAGU MUKHIYA, S/o Late Dashrath Mukhiya, R/V- Chailaha Lothi (Chailaha Bin Toli) P.S.- Banjariya, Distt- East Champaran.
 2. Bijay Mukhiya, S/o Late Shankar Mukhiya, R/V- Chailaha Lothi (Chailaha Bin Toli) P.S.- Banjariya, Distt- East Champaran.
 3. Sikandar Mukhiya, S/o Late Jhapas Mulhiya, R/V- Chailaha Lothi (Chailaha Bin Toli) P.S.- Banjariya, Distt- East Champaran.
 4. Laxaman Mukhiya, S/o Late Dashrath Mukhiya, R/V- Chailaha Lothi (Chailaha Bin Toli) P.S.- Banjariya, Distt- East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vijay Shankar Shrivastava, Advocate

For the Opposite Party/s : Mr.Akhileshwar Dayal,APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

4 06-02-2023 Learned counsel for the petitioners is permitted to remove the defect(s), as pointed out by the office, if any, within a period of three weeks from today.

Heard learned counsel for the petitioners and learned
Additional Public Prosecutor for the State.

The petitioners are apprehending their arrest in a case registered for the offences punishable u/s 30(A), 32, 34, 36 and 41(i) of the Bihar Prohibition and Excise Act.

As per the prosecution case, some miscreants were manufacturing country made liquor at the bank of Dhanauti



river. A raid was conducted by the police and 40 litres of country made liquor was recovered while the miscreants fled away.

Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. The petitioner no. 1 and 3 are accused in three other criminal cases which are related to Excise Act whereas petitioner no. 2 is accused in four other criminal cases and the petitioner no. 4 is accused in two other criminal cases which are also related to Excise Act, in all such cases the petitioners are on bail as stated in para 2 of the supplementary affidavit filed on behalf of the petitioners. Nothing has been recovered from the possession of the petitioners. He has further submitted that the name of the petitioners has transpired on the basis of disclosure of the local *chowkidar* and villagers. 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 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.

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.

Considering the aforesaid facts and circumstances of the case as well as the nature of allegation against the petitioners, let the above named petitioners, in the event of their arrest/surrender within a period of six weeks from today, be enlarged on 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 learned Court concerned, East Champaran at Motihari in connection with Turkaulia (Banjariya) P.S. Case No. 763 of 2022, subject to conditions as laid down under Section 438 (2) of the Code of Criminal Procedure.

This application stands allowed.

(Chandra Prakash Singh, J)

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