

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65826 of 2023

Arising Out of PS. Case No.-730 Year-2021 Thana- SARAIYA District- Muzaffarpur

1. Ashok Chaudhary @ Ashok Kumar Chaudhary Son Of Late Janak Lal Chaudhary R/O Vill - Arupur, P.S. - Saraiya, Distt. - Muzaffarpur
2. Sujit Kumar Chaudhary @ Sujit Chaudhary Son Of Ashok Chaudhary @ Ashok Kumar Chaudhary R/O Vill - Arupur, P.S. - Saraiya, Distt. - Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Santosh Kumar Singh

For the Opposite Party/s : Mr.Sanjay Kumar Tiwary

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 02-12-2023 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.

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

3. The petitioners are apprehending their arrest in connection with Saraiya (Jaitpur O.P) P.S. Case No. 730 of 2021 dated 30.10.2021 registered for the offences punishable under Sections 272, 273, 328, 307, 302, 120B read with 34 of the Indian Penal Code and Sections 30(a), 30(c) and 37(b) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, due to consumption of spurious liquor a person has died in village Bishambarpur and 2-3 persons are still under treatment. It is further alleged that during the course of investigation, the informant came to know



about the involvement of 11 FIR named accused persons in the sale of spurious liquor. On search, half filled bottle of 375ml whiskey and 10ml in 180ml bottle of whiskey was found from the shop of Manoj and Anoj Rai and upon search of the house-cum-shop of the accused, Ram Ekbal Sah 750 ml of imperial blue and from counter total Rs. 48.735, a passbook, empty bottles of a different brands and caps of bottles were found.

5. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case on mere suspicion. The petitioner is not named in the F.I.R. The other co-accused person has already been granted bail by the Co-ordinate Bench *vide* order dated 11.10.2022 passed in Cr. Misc. No. 31145 of 2022. The petitioner No. 1 is accused in one more criminal case whereas the petitioner No. 2 has clean antecedent as stated in para 3 of the bail petition. No incriminating article has been recovered from the conscious possession of the petitioners, hence no case is made out. 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 petitioners 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, let the above named petitioners, in the event of their 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) each with two sureties of the like amount each to the satisfaction of learned Court concerned, Muzaffarpur in connection with Saraiya (Jaitpur O.P) P.S. Case No. 730 of 2021, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

8. This application stands allowed.

(Chandra Prakash Singh, J)

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