

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.69352 of 2023

Arising Out of PS. Case No.-563 Year-2021 Thana- KOILWAR District- Bhojpur

1. Akhilesh Rai Son Of Late Ram Bhushan Rai @ Ram Pujan Rai R O Vill Mahadeochak Simariya P S Bhojpur District Arrah
2. Fani Bind @ Fani Bin Son Of Meghnad Bind R O Vill Mahadeochak Simariya P S Bhojpur District Arrah
3. Gautam Rai Son Of Vishwanath Rai R O Vill Mahadeochak Simariya P S Bhojpur District Arrah
4. Bhushan Rai @ Ramsundar Rai Son Of Late Shivpujan Rai R O Vill Mahadeochak Simariya P S Bhojpur District Arrah

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur, Advocate

For the Opposite Party/s : Mr. Shyam Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 31-10-2023 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 a case in connection with Koilwar P.S. Case No. 563 of 2021 dated 18.11.2021 for the offence punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 55 litres of country made liquor was recovered near the Sone river.



5. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioners. Learned counsel has further submitted that the petitioners were doing the business of sand. Similarly situated co-accused person has already been granted anticipatory bail by the co-ordinate bench of this court vide order dated 19.10.2023 passed in Cr. Misc. No. 67603 of 2023. The petitioner no. 1 has three, the petitioner no. 2 has two, the petitioner no. 3 has one and the petitioner no. 4 has two criminal antecedents as stated in para 3 of the bail petition. Learned counsel has submitted that no case is made out against the petitioners. Learned Counsel has relied on the judgment of Full Bench of the 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.

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 as well as the material available on record, 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 the learned court concerned, Bhojpur, Arrah in connection with Koilwar P.S. Case No. 563 of 2021, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure, with the following condition/s:-

(i). The petitioners are directed to remain physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, the bail bonds of the petitioners are liable to be cancelled.

8. The application stands allowed.

(Chandra Prakash Singh, J)

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