

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71313 of 2023**

Arising Out of PS. Case No.-192 Year-2023 Thana- GORIAKOTHI District- Siwan

1. Bhola Tiwary S/O Late Rama Tiwary Village- Hulas Chapra, Ps-Goryakothi, Dist-Siwan
2. Ranjeet Tiwary Son Of Hari Kishore Tiwary Village- Hulas Chapra, Ps-Goryakothi, Dist-Siwan

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Tiwary, Advocate

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

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

ORAL ORDER

2 23-11-2023 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 Gorykothi P.S Case No. 192 of 2023 dated 03.07.2023 for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 17.820 litres of foreign liquor was recovered from the bag which was allegedly thrown after parking the motorcycle near bridge of gas agency.



5. Learned counsel for the petitioners has submitted that the petitioners has falsely been implicated in this case. It is further submitted that the petitioners are not the owner of said vehicle. Learned counsel has further submitted that the said motorcycle was not being driven by the petitioners at the time of alleged occurrence. The petitioners have no criminal antecedent as stated at 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 petitioner 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 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 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, Siwan in connection with Goryakothi P.S. Case No. 192 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

(Chandra Prakash Singh, J)

Nilmani/-

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