

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73106 of 2023

Arising Out of PS. Case No.-528 Year-2023 Thana- BARHARA District- Bhojpur

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1. AZAD RAI S/o JAI PRAKASH RAI R/o vill - Gaura Ka Dera, P.S. - Barahara (Khwaspur O.P.), Distt. - Bhojpur
 2. Angad Rai Son of Satya Rai R/o vill - Gaura Ka Dera, P.S. - Barahara (Khwaspur O.P.), Distt. - Bhojpur

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Amarendra Kumar, Advocate

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

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 28-11-2023 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 a case in connection with Barahara (Khwaspur OP) P.S. Case No. 528 of 2023 dated 01.09.2023 for the offence/s punishable u/ss 30(a), 32, 36(i) and 41(i) (ii) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 657.36 litres of illicit foreign liquor was recovered from a tractor.



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. The petitioners are neither the driver nor the owner of the said vehicle. The name of the petitioners has sprung up on the confessional statement of the co-accused Chandan Kumar. The petitioners have no 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, Ara in connection with Barahara (Khwaspur OP) P.S. Case No. 528 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

8. The application stands allowed.

(Chandra Prakash Singh, J)

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