

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76648 of 2023

Arising Out of PS. Case No.-515 Year-2023 Thana- BARHARA District- Bhojpur

1. Ghanshyam Rai Son Of Late Murlidhar Rai @ Murari Rai Resident Of Village- Saligram Singh Ka Tola, Ps- Barahara, Distt- Bhojpur At Ara
2. Praduman Rai Son Of Late Murlidhar Rai @ Murari Rai Resident Of Village- Saligram Singh Ka Tola, Ps- Barahara, Distt- Bhojpur At Ara
3. Nepal Rai @ Nepal Yadav Son Of Late Deonath Rai @ Deo Nath Yadav Resident Of Village- Saligram Singh Ka Tola, Ps- Barahara, Distt- Bhojpur At Ara

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mrs. Priya, Advocate

For the Opposite Party/s : Mr.Mritunjay Kumar Nirala. A.P.P

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 18-12-2023 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 Barahara P.S. Case No. 515 of 2023 dated 24.08.2023 registered for the offence punishable u/s 30(c) and 30(d) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 870 kgs of jaggery powder was recovered from a magic vehicle and a



motorcycle was seized. Further, on search near the dam, 200 litres of mahuwa pass was recovered which was destroyed.

5. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. The petitioner No. 2 and 3 have no criminal antecedent whereas the petitioner No. 1 is accused in one more criminal case as stated in para 3 of the bail petition. The local chowkidar disclosed the names of the petitioners. No incriminating article has been recovered from the conscious possession of the petitioner, 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 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) each with two sureties of the like amount each to the satisfaction of learned Court concerned, Bhojpur at Aara in connection with Barahara P.S. Case No. 515 of 2023, 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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