

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71720 of 2023

Arising Out of PS. Case No.-180 Year-2023 Thana- NAUTAN District- Siwan

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1. NITISH KUMAR SINGH son of Swaminath Bhagat village- Koeri Tola Semaria Ps- Nautan Dist- Siwan
 2. Ashish Kumar son of Jai Shankar Kushwaha village- Koeri Tola Semaria Ps- Nautan Dist- Siwan

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Chandra Shekhar, Advocate

For the Opposite Party/s : Mr. Akhileshwar Dayal, 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 Nautan P.S Case No. 180 of 2023 dated 05.09.2023 for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 261 litres of illicit country made liquor was recovered from fodder(*Bhusha*).

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 have no concern with the Karkatnuma room or fooder (*Bhusha*) 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 Nautan P.S. Case No. 180 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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