

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76867 of 2023

Arising Out of PS. Case No.-371 Year-2017 Thana- CHAPRA MUFFASIL District- Saran

1. Hari Shankar Rai @ Shyam Babu Rai Son Of Late Kishundeo Rai Resident Of Village- Rouza Naya Basti, Ps- Chapra, Town, - Distt- Saran
2. Uday Kumar Son Of Hari Shankar Rai @ Shyam Babu Rai Resident Of Village- Rouza Naya Basti, Ps- Chapra, Town, - Distt- Saran

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Srivastva, Advocate

For the Opposite Party/s : Mr. Nityanand, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 20-12-2023 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 Chapra Muffasil P.S Case No. 371 of 2017 dated 21.11.2017 for the offences punishable u/ss 30, 38, 41 of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 50 litres of illicit liquor was recovered from the two motorcycles.



5. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. It is further submitted that the apprehended co-accused namely, Prakash Kumar, disclosed the name of the petitioners. 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 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) with two sureties of the like amount each to the satisfaction of the learned court concerned, Saran at Chapra in connection with Chapra Muffasil P.S Case No. 371 of 2017, 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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