

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77700 of 2023

In
CRIMINAL APPEAL (SJ) No.3025 of 2023

Arising Out of PS. Case No.-161 Year-2023 Thana- DANAPUR District- Patna

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1. SIRMAL KUMAR @ GABBAR Son of Shyam Lal Rai @ Shaym Lal @ Sham Lal R/o Trimurti Nagar Sultanpur, P.S. - Danapur, Dist. - Patna
 2. Birbal Kumar Son of Shyam Lal Rai @ Shaym Lal @ Sham Lal R/o Trimurti Nagar Sultanpur, P.S. - Danapur, Dist. - Patna

... .. Petitioner/s

Versus

THE STATE OF BIHAR Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shambhu Sharan Singh, Adv.
For the Opposite Party/s : Mr.Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

5 21-12-2023 Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in a case in connection with Special Case No. 265 of 2023 arising out of Danapur P.S. Case No. 161 of 2023 dated 05.02.2023 registered for the offences punishable u/ss 30(a), 37(b)(c) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 11 litres of country made *mahua* liquor was recovered from the co-accused persons. It is further alleged that the petitioners are indulged in illegal business of liquor.



5. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. The petitioners have no criminal antecedent as stated in para 3 of the bail petition. Nothing has been recovered from the possession of the petitioners. It is further submitted that the petitioners are full brothers and they have no concern with the alleged recovery, hence no case is made out against the petitioners. 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.

6. 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 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, Danapur in connection with Special Case No. 265 of 2023 arising out of Danapur P.S. Case No. 161 of 2023, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

7. This application stands allowed.

(Chandra Prakash Singh, J)

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