

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75003 of 2023

Arising Out of PS. Case No.-52 Year-2023 Thana- PARWALPUR District- Nalanda

1. Nitish Kumar Son Of Suresh Singh R/O Village - Wana Bigha, P.S. - Parwalpur, Dist.- Nalanda.
2. Satish Kumar @ Chhote Kumar Son Of Nawlesh Kumar R/O Village - Wana Bigha, P.S. - Parwalpur, Dist.- Nalanda.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Davendra Kumar Pandey, Advocate

For the Opposite Party/s : Mr. Rajendra Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 06-12-2023 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 a case in connection with Parwalpur P.S. Case No. 52 of 2023 dated 28.03.2023 for the offence/s punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 9 litres of foreign liquor from the house of the co-accused Naresh Sharma, 4.14 litres of foreign liquor from the tempo and 1.3 litres of foreign



liquor from the motorcycle, were recovered.

5. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. The name of the petitioners have been disclosed by the co-accused Karu Singh. No incriminating material has been recovered from the conscious possession of the petitioners. The petitioners are neither the owner nor the driver of the said vehicle. The petitioners have no concern with the alleged recovery. The petitioner no.1 is also accused in one more criminal case whereas the petitioner no. 2 has no criminal antecedent 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 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, Nalanda in connection with Parwalpur P.S. Case No. 52 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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