

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77716 of 2023

Arising Out of PS. Case No.-314 Year-2022 Thana- BELA District- Sitamarhi

1. Lal Babu Sahni @ Lalu Sahni S/O Rajendra Sahni Resident Of Viallage - Rampur Bakchaora, P.S.- Bela, Dist.-- Sitamarhi
2. Jay Kishore Ram @ Jay Kishore S/O Jogeshwar Ram Resident Of Village - Lahuriya, P.S.- Bela, Dist.- Sitamarhi
3. Feku Sahni S/O Late Ram Briksh Sahni Resident Of Village - Rampur Bakchaora, P.S. - Bela, Dist.- Sitamarhi

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar, Adv.

For the Opposite Party/s : Mr.Parmanand Prasad, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 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 Bela P.S. Case No. 314 of 2022 dated 26.11.2022 registered for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 108 litres of illicit *Nepali Sauft* wine was allegedly thrown by the petitioner and the co-accused persons. One person was apprehended from the spot and the other accused persons fled away.

5. Learned counsel for the petitioners has submitted



that the petitioners have falsely been implicated in this case. The petitioner no. 1 and 3 have three criminal antecedent whereas the petitioner no. 2 has one criminal antecedent as stated in para 3 of the bail petition. The name of the petitioners was disclosed by the co-accused, Gulam Sahni. Nothing has been recovered from the conscious possession of the petitioners rather the recovery has been made from the bank of river. 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, Sitamarhi in connection with Bela P.S. Case No. 314 of 2022, 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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