

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74777 of 2022

Arising Out of PS. Case No.-274 Year-2022 Thana- SATHI District- West Champaran

1. Ganesh Mukhiya Son Of Sri Chunni Mukhiya R/O Vill.- Basantpur, P.S.- Sathi, Distt.- West Champaran
2. Ramdayal Mukhiya Son Of Sri Bagar Mukhiya R/O Vill.- Basantpur, P.S.- Sathi, Distt.- West Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Abhishek Kumar, Advocate

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

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 03-02-2023 Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, if any, within a period of three weeks from today.

Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State through virtual court proceeding.

The Petitioner is apprehending his arrest in a case registered for the offences punishable u/s 272, 273 of the Indian Penal Code and 30(a) of the Bihar Prohibition and Excise Act.

As per the prosecution case, 5 litres of illicit liquor was recovered from the house of the petitioner no. 1 Ganesh Mukhiya and 3 litres of illicit liquor was recovered from the



house of the petitioner no. 2 Ramadayan Mukhiya.

Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. The petitioner has no criminal antecedent as stated at para 3 of the bail petition. Learned counsel has submitted that no case is made out against the petitioner. 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.

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. Learned APP further submitted that the recovery is made from the house of both the petitioners.

Considering the aforesaid facts and circumstances of the case as well as the recovery from the conscious possession of the petitioners. Accordingly the anticipatory bail is disposed



of with direction to the petitioners to surrender before the court below concerned within six weeks from today and pray for regular bail, the learned court below shall consider their prayers for regular bail on the same day without being prejudiced by this order.

(Chandra Prakash Singh, J)

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