

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1247 of 2023

Arising Out of PS. Case No.-367 Year-2022 Thana- MUFFASIL District- Aurangabad

1. UMESH KUMAR Son of Baidyanath Prasad R/o village - Manjhar, P.S.- Pakridayal, District - East Champaran
2. Naresh Bhagat @ Naresh Kushwaha Son of Badri Prasad R/o village - Manjhar, P.S.- Pakridayal, District - East Champaran
3. Dharmendra Kumar Son of Govardhan Prasad R/o village - Siraha, House No.- 45, Ward No.- 6, P.S.- Pakridayal, District - East Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh, Advocate
For the Opposite Party/s : Mr. Md. Matloob Rab, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 10-02-2023 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.

Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

The Petitioners are apprehending their arrest in a case registered for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

As per the prosecution case, total 1194.48 litres foreign liquor was recovered from the truck and the co-accused Rakesh Kumar has disclosed the name of the petitioners.



Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. The petitioners are neither the drivers nor the owners of the said vehicle. The name of the petitioners has transpired on the basis of the disclosure of the co-accused person. Nothing has been recovered from the conscious possession of the petitioners. The petitioners have 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.

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.

Considering the aforesaid facts and circumstances of the case as well as the material available on record, let the above



named petitioner, 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, Aurangabad in connection with Aurangabad(M) P.S. Case No. 367 of 2022, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

The application stands allowed.

(Chandra Prakash Singh, J)

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