

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.490 of 2023

Arising Out of PS. Case No.-545 Year-2022 Thana- KAUWAKOL District- Nawada

1. PARO YADAV @ PARMESHWAR YADAV, S/O Late Misti Yadav R/O Village- Manniyatari, P.S- Kawakole, District- Nawada
2. Shiv Ji Sao, S/O Late Bhannu Sao, R/O Village- Manniyatari, P.S- Kawakole, District- Nawada

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rajesh Ranjan Kumar, Advocate

For the Opposite Party/s : Mr.Sanjay Kumar Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 03-02-2023 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 through virtual court proceeding.

The petitioners are apprehending their arrest in a case registered for the offences punishable u/s 30(a), (d) and 41 of the Bihar Prohibition and Excise Act.

As per the prosecution case, 10 litres country made *mahua* liquor and 300 litres of fragmented *mahua* liquor were also recovered from the forest of Paharpur.



Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. The petitioner no. 1 is accused in one more case in which he is on bail and the petitioner no. 2 has got no criminal antecedent as stated in para 3 of the bail petition. Nothing has been recovered from the possession of the petitioners as recovery has been made from an open place of the forest. 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 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.

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 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, Nawada in connection with Kawakole P.S. Case No. 545 of 2022, subject to conditions as laid down under Section 438 (2) of the Code of Criminal Procedure.

This application stands allowed.

(Chandra Prakash Singh, J)

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