

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5139 of 2024

Arising Out of PS. Case No.-206 Year-2023 Thana- VISHAMBHARPUR District- Gopalganj

1. Krishna Yadav Son of Late Babu Nand Yadav R/O Vill - Kala Matihiniya, P.S. - Bishambharpur, Distt. - Gopalganj, At Present Address - Rampur Bangara, P.S. - Tariya Sujan, Distt. - Kushinagar U.P
2. Chhotan Yadav Son of Harendra Yadav R/O Vill - Kala Matihiniya, P.S. - Bishambharpur, Distt. - Gopalganj, At Present Address - Rampur Bangara, P.S. - Tariya Sujan, Distt. - Kushinagar U.P
3. Pradeep Yadav @ Pradeep Kumar Yadav Son of Harendra Yadav R/O Vill - Kala Matihiniya, P.S. - Bishambharpur, Distt. - Gopalganj, At Present Address - Rampur Bangara, P.S. - Tariya Sujan, Distt. - Kushinagar U.P

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Arvind Kumar, Advocate
For the Opposite Party/s : Mr. Bhanu Pratap Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 15-02-2024 Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

2. The Petitioners are apprehending their arrest in connection with Vishambharpur P.S. Case No. 206 of 2023 dated 20.10.2023 or the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act 2018.

3. As per the prosecution case, total 81 litres of illicit country liquor was recovered from the *motorcycle* under a *plastic gunny bag*.

4. Learned counsel for the petitioners have submitted



that the petitioners are innocent and have falsely been implicated in this case. The petitioners have three criminal antecedent as stated at para 3 of the bail petition. The name of the petitioners has transpired in this case only on the basis of the confessional statement of apprehended persons. The petitioners are not the owner of the said vehicle and the same was not being driven by the petitioners at the time of the alleged recovery. No incriminating article has been recovered from the conscious possession of the petitioners, hence no case is made out. 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.

5. 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 anticipatory bail on furnishing bail-bond of Rs. 20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of the learned court concerned, Gopalganj in connection with Vishambharpur P.S. Case No. 206 of 2023subject 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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