

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9808 of 2024

Arising Out of PS. Case No.-218 Year-2023 Thana- WARISNAGAR District- Samastipur

1. Nitish Kumar @ Nitesh Kumar Son Of Sikandar Sahani @ Sikandar Sahni
Resident Of Village- Manopur, Ps- Hayaghat, Dist- Darbhanga
2. Kundan Kumar Son Of Gango Sahani Resident Of Village- Manopur, Ps-
Warisnagar, Dist- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Dr. Kumar Uday Pratap, APP.

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

2 23-02-2024 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 Warisnagar P.S. Case No. 218 of 2023 dated 23.06.2023 for the offence punishable u/s 30(a) of the Bihar Prohibition and Excise Act, 2018.

3. As per the prosecution case, total 7 litres of illicit country made liquor was recovered from the possession of the co-accused.

4. Learned counsel for the petitioner has submitted that the petitioners are innocent and have falsely been implicated in this case. No incriminating material has been



recovered from the conscious possession of the petitioners. The recovery was made from the possession of the co-accused. The petitioners have no concern with the alleged recovery. The name of the petitioners has transpired in the confessional statement of the co-accused Bablu Kumar. 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.

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 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 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, Samastipur in connection with Warisnagar P.S. Case No. 218 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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