

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8748 of 2024

Arising Out of PS. Case No.-1261 Year-2023 Thana- KAHALGAON District- Bhagalpur

1. Mithlesh Kumar @ Mithilesh Kumar S/O- Naresh Mandal R/O- Village- Mahua Bazar, P.S.- Basrahi, Dist.- Saharsa.
2. Manish Kumar S/O- Narayan Mandal R/O- Village- Mahua Bazar Ward No.- 2, P.S.- Basrahi, Dist.- Saharsa.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Davendra Kumar Pandey, Adv.

For the Opposite Party/s : Ms. Rita Verma, APP.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 22-02-2024 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 Kahalgaon (Ghogha) P.S. Case No. 1261 of 2023 dated 05.11.2023 for the offence punishable u/s 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2016.

3. As per the prosecution case, 132.12 litres of illicit foreign liquor was recovered from the car and 39.03 liters of illicit foreign liquor was recovered from the motorcycle.

4. Learned counsel for the petitioners 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 petitioners are neither the owner nor the driver of the said vehicles. The said vehicles were not being driven by the petitioners at the time of the alleged occurrence. The petitioners have no concern with the alleged recovery. The name of the petitioners was disclosed by local people. 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 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.

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, Bhagalpur in connection with Kahalgaon (Ghogha) P.S. Case No. 1261 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)

annpurna/-

U		T	
---	--	---	--

