

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10823 of 2024

Arising Out of PS. Case No.-207 Year-2023 Thana- WAJIRGANJ District- Gaya

1. Vikash Kumar @ Pandit Jee Son of Suresh Yadav R/o vill - Kanaudi, P.S. - Wazirganj, Distt. - Gaya
2. Shrawan Kumar @ Sarwan Kumar @ Girijesh Kumar @ Buta S/o Raghu Yadav R/o vill - Kanaudi, P.S. - Wazirganj, Distt. - Gaya

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr.Ramchandra Sahni, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 27-02-2024 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 Wazirganj P.S. Case No. 207 of 2023 dated 13.04.2023 registered for the offences punishable u/ss 414 read with Section 34 of the Indian Penal Code and u/ss 30(a), 30(b) and 45 of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 40 litres of illicit country made liquor, a dram containing mixture of gud, kismiss and badam, utensils, 2 bottles, 2 motorcycles were recovered near the mountain area of village Sukha Bigha.

4. Learned counsel for the petitioners has submitted



that the petitioners are innocent and have falsely been implicated in this case. The petitioners have no criminal antecedent as stated in para 3 of the bail petition. The name of the petitioners has sprung up in the confessional statement of the co-accused, Raushan Kumar and Sitaram Manjhi. The petitioners have no concern with the alleged recovery rather the recovery has been made from an open place which is accessible to anyone. Nothing 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 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, Gaya in connection with Wazirganj P.S. Case No. 207 of 2023, subject 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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