

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13196 of 2024

Arising Out of PS. Case No.-446 Year-2023 Thana- CHAKIA District- East Champaran

1. Subodh Kumar Son of Sahdev Yadav Resident of Village- Bhaluiyatar, P.S.- Muffasil, Nawada, District- Nawada, Bihar
2. Sonu Kumar Son of Chandrika Prasad Yadav R/o Village- Shitalpur, P.S.- Chakia, District- East Champaran

... .. Petitioner/s

Versus

The State of Bihar Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Prateek Tandon

For the Opposite Party/s : Mr.Nityanand

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 05-03-2024 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 Chakia P.S. Case No. 446/2023 dated 18.12.2023 registered for the offences punishable u/ss 30(a), 30(d), 34(b), 41(1) and 41(2) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 1230 litres of spirit was recovered from from a pick-up van and 270 litres of spirit was recovered from the premise of Pashupati Transport.

4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. The petitioner No. 1 is accused in one



more criminal case whereas the petitioner No. 2 have no criminal antecedent as stated in para 3 of the bail petition. The petitioners are neither the owner of the pick-up van or Pashupati Transport nor the driver of the said pick-up van. Nothing has been recovered from the conscious possession of the petitioners hence, no case is made out against the petitioners. The other co-accused person has already been granted anticipatory bail by the Co-ordinate Bench of this court *vide* order dated 21.02.2024 passed in Cr. Misc. No. 6846 of 2024. 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, East Champaran in connection with Chakia P.S. Case No. 446/2023 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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