

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22436 of 2024

Arising Out of PS. Case No.-444 Year-2023 Thana- DIDARGANJ District- Patna

1. Rahul Kumar Son of Shankar Rai @ Shankar Ray R/o Village- Didarganj, Back side Gali of Kumar Petrol Pump, P.S.- Didarganj, District- Patna
2. Vishal Kumar Son of Shankar Rai @ Shankar Ray R/o Village- Didarganj, Back side Gali of Kumar Petrol Pump, P.S.- Didarganj, District- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Jay Ram Prasad, Advocate

For the Opposite Party/s : Mr.Sangeeta Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 20-03-2024 Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

2. Learned counsel for the petitioners submits that the petitioner No. 1 has been arrested. Accordingly, he seeks permission to withdraw the present application.

3. Permission is accorded.

4. Accordingly, the present application of the petitioner No. 1 is dismissed as withdrawn.

5. The petitioner is apprehending his arrest in connection with Didarganj P.S. Case No. 444/2023 dated 31.12.2023 registered for the offence punishable u/s 30(a) and 36 of the Bihar Prohibition and Excise Act.



6. As per the prosecution case, 9 litres of illicit foreign liquor was recovered from the Maruti Alto car and 30.960 litres of illicit liquor was recovered from the house of the co-accused Shankar Rai.

7. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. The petitioner has one criminal antecedent as stated in para 3 of the bail petition. The petitioner is made accused in this case only because he is the son of the co-accused Shankar Rai. As per the seizure list, the recovery was not made from the house of the co-accused Shankar Rai rather it was made from pathway beside the Kumar petrol pump. No incriminating article has been recovered from the conscious possession of the petitioner, 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.



8. Learned A.P.P. for the State has vehemently opposed the prayer for anticipatory bail of the petitioner by submitting that the bar of Section 76(2) of the Act applies in this case.

9. Considering the aforesaid facts and circumstances of the case as well as the nature of allegation against the petitioner, let the above named petitioner, let the above named petitioner, in the event of his 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, Patna City in connection with Didarganj P.S. Case No. 444/2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

10. The application stands allowed.

(Chandra Prakash Singh, J)

atul/-

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

