

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16176 of 2024

Arising Out of PS. Case No.-940 Year-2023 Thana- LAKHISARAI District- Lakhisarai

1. Kanhaiya Saw @Kanhaiya Kumar SON OF SHARWAN SAW RESIDENT OF VILLAGE- PACHNA ROAD, GANDHI TOLA, WARD NO. 17, PS-KABAIYA OP , DIST- LAKHISARAI
2. SHARWAN SAW SON OF LATE SITARAM SAW RESIDENT OF VILLAGE- PACHNA ROAD, GANDHI TOLA, WARD NO. 17, PS-KABAIYA OP , DIST- LAKHISARAI

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shaukat Alam, Adv.
For the Opposite Party/s : Mr.Ajit Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 13-03-2024 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 Lakhisarai (Kabaiya) P.S. Case No. 940 of 2023 dated 03.12.2023 for the offence/s punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 50 litres of illicit country made liquor was recovered near the house of the petitioner no. 1, Kanhaiya Saw.

4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. Nothing has been recovered from the conscious possession of



the petitioners. The recovery was made from an open place that is accessible to anyone. The petitioners have no concern with the alleged recovery. Local people disclosed the name of the petitioners. The petitioner no. 2 has one more criminal case and the petitioner no. 1 has 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 the 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 the 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) each with two sureties of the like amount each to the satisfaction of the learned court concerned, Lakhisarai in connection with Lakhisarai



(Kabaiya) P.S. Case No. 940 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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