

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17007 of 2024

Arising Out of PS. Case No.-41 Year-2024 Thana- PHULWARIYA District- Gopalganj

1. Raju Sah @ Barku S/o Late Ashok Sah R/o Koila Dewa, P.S.- Phulwariya, Distt.- Gopalganj
2. Santosh Yadav S/o Parshuram Yadav R/o- Mardwani, P.S.- Phulwariya, District- Gopalganj

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Deepankar Raj
For the Opposite Party/s : Mr. Satyendra Prasad

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 14-03-2024 Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

2. The Petitioners are apprehending their arrest in connection with Phulwariya P.S. Case No. 41 of 2024 dated 27.01.2024 of the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act 2018.

3. As per the prosecution case, total 41.400 litres of illicit country made liquor was recovered from the bag in the bush thrown by the apprehended co-accused Babita Devi.

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 has two criminal



antecedents and petitioner no. 2 has four criminal antecedents as stated in para 3 of the bail petition. The name of the petitioners was disclosed by the apprehended person. No incriminating article 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 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, Gopalganj, in connection with Phulwariya P.S. Case No. 41 of 2024 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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