

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23470 of 2024

Arising Out of PS. Case No.-364 Year-2023 Thana- KALYANPUR District- Samastipur

1. Kundan Ray @ Chandan Kumar Yadav Son of Anil Ray @ Anil Kumar Yadav R/V- Malipur Tole Manorathpur, P.S.- Kalyanpur, District- Samastipur
2. Arvind Ray @ Arvind Kishor Son of Nagina Ray @ Ram Nagina Yadav R/V- Malipur Tole Manorathpur, P.S.- Kalyanpur, District- Samastipur

... .. Petitioner/s

Versus

The State of Bihar Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ajay Kumar
For the Opposite Party/s : Mr.Rajendra Nath Jha

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 08-04-2024 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 Kalyanpur P.S. Case No. 364/2023 dated 29.12.2023 registered for the offence punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 259.200 litres of illicit foreign liquor was recovered from the pick up van.

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



apprehended co-accused, Ritesh Kumar disclosed the name of the petitioners. Nothing has been recovered from the conscious possession of the petitioners hence, no case is made out against the petitioners. The petitioners are neither the owner nor the driver of the said vehicle. 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, Samastipur in connection with Kalyanpur P.S. Case No. 364/2023 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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