

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24778 of 2024

Arising Out of PS. Case No.-183 Year-2023 Thana- Excise P.S. District- East Champaran

1. Akash Kumar, aged about 23 years, Male, Son of Surendra Prasad Yadav, Resident of Village-Shitalpur (Siswa), P.S.-Chakiya, District-East Champaran.
2. Santosh Paswan, aged about 43 years, Male, Son of Sitaram Paswan, Resident of Village-Math Garib, P.S.-Chakiya, District-East Champaran.
3. Parmendra Kushwaha @ Kabindra Bhagat, aged about 30 years, Male, Son of Nagendra Bhagat, Resident of Village-Bokane Khurd, P.S. - Fenhara, District- East Champaran.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioners : Mr. Ajay Kumar Singh, Advocate
For the Opposite Party : Mr. Nirmal Kumar Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 27-03-2024 Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Excise (Madhuban) P.S. Case No. 183 of 2023 dated 18.08.2023 registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2018.

3. As per the prosecution case, total 1380.6 litres of illicit foreign liquor was recovered from three different vehicles such as Tata Truck, Mahindra Bolero Pick-up Van and T.V.S.



Sport Motorcycle.

4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have been falsely implicated in this case. It is submitted that the petitioner no. 1 has three criminal antecedents, the petitioner no. 2 has three criminal antecedents and the petitioner no. 3 has one criminal antecedent. It is further submitted that neither the petitioners are the owners of the vehicles in question nor the said vehicles were being driven by the petitioners at the time of the alleged occurrence. The petitioners have no concern with the alleged recovery. No incriminating article has been recovered from the conscious possession of the petitioners. Hence, no case under the Excise Act is made out against the petitioners. Learned counsel for the petitioners 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 F.I.R., no offence under the said provision is made out. There is no compliance of Section 100 of the Cr.P.C. It is



further submitted that other co-accused person has been granted anticipatory bail by a Bench of this Court vide Cr. Misc. No. 81205 of 2023 under order dated 12.01.2024.

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/- (Twenty Thousand) each with two sureties of the like amount each to the satisfaction of learned court concerned, East Champaran, Motihari, in connection with Excise (Madhuban) P.S. Case No. 183 of 2023, subject to the condition 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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