

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26864 of 2024

Arising Out of PS. Case No.-89 Year-2024 Thana- SAUR BAZAR District- Saharsa

1. Gautam Paswan @ Gautam Kumar S/o Ghanshyam Paswan R/o Village-Samda Ward No. 11, P.S. Sour Bazar, District- Saharsa
2. Ganesh Paswan @ Ganesh Kumar S/o Ghanshyam Paswan R/o Village-Samda Ward No. 11, P.S. Sour Bazar, District- Saharsa

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Md Harun Quareshi, Adv

For the Opposite Party/s : Mr. Umeshanand Pandit, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 18-04-2024 Learned counsel for the petitioners are permitted to remove the defect(s), as pointed out by the office, if any, within a period of three weeks from today.

2. Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

3. The Petitioners are apprehending their arrest in connection with Sour Bazar P.S Case No. 89/2024 dated 31.01.2024 for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 33 litres of illicit cough syrup was recovered from the house of the petitioners.

5. Learned counsel for the petitioner has submitted



that the petitioners are innocent and has falsely been implicated in this case. The petitioners have no criminal antecedent as stated in para 3 of the bail petition. 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.

6. 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. It is further submitted that the recovery is from the house of the petitioners.

7. Considering the aforesaid facts and circumstances of the case as well as the materials available on record against the petitioners, I am of the view that no case for grant of anticipatory bail is made out. The petition is rejected and the



petitioners are directed to surrender to the Court below within
six weeks from the date of this order and the Court below shall
consider the prayer of the bail of the petitioners on the same day
without being prejudice by this order.

(Chandra Prakash Singh, J)

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