

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23482 of 2024

Arising Out of PS. Case No.-1291 Year-2023 Thana- TURKAULIYA District- East
Champaran

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1. Rakesh Mukhiya S/O Laxuman Mukhiya @ Lakshaman Mukhiya R/O Vill - Chailaha Bintoli, P.S. - Banjariya, Distt. - East Champaran
 2. Chhabila Mukhiya @ Chhabila Kumar Mukhiya S/O Laxuman Mukhiya @ Lakshaman Mukhiya R/O Vill - Chailaha Bintoli, P.S. - Banjariya, Distt. - East Champaran
 3. Guddu Mukhiya S/O Jaggu Mukhiya R/O Vill - Chailaha Bintoli, P.S. - Banjariya, Distt. - East Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Priyesh Kumar
For the Opposite Party/s : Mr.Umeshanand Pandit

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 Turkauliya (Banjariya) P.S. Case No. 1291/2023 dated 23.12.2023 registered for the offence punishable u/s 30(a) and 41(1) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 120 litres of illicit country-made liquor, one gas cylinder, stove and a 3 feet copper pipe were recovered near the bank of river Dhanauti.

4. Learned counsel for the petitioners has submitted



that the petitioners are innocent and have falsely been implicated in this case. The petitioner No. 2 and 3 have no criminal antecedent whereas the petitioner No. 1 is accused in four other criminal cases out of which he is on bail in all the aforesaid cases as stated in para 3 of the bail petition. The recovery was from an open place which is accessible to anyone. Nothing has been recovered from the conscious possession of the petitioners hence, no case is made out against the petitioners. 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, East Champaran, Motihari in connection with Turkauliya (Banjariya) P.S. Case No. 1291/2023, 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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