

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33311 of 2024

Arising Out of PS. Case No.-45 Year-2024 Thana- UDWANTNAGAR District- Bhojpur

1. Mithlesh Yadav @ Mithilesh Kumar Son of Kameshwar Yadav Resident of vill.-Mahtbaniya, P.S.-Udwant Nagar, Distt.-Bhojpur
2. Gudu Yadav @ Gudu Singh Son of Kameshwar Yadav Resident of vill.-Balua Ranipurwa, P.S.-Bairiya, Distt.-West Champaran

... .. Petitioners

Versus

The State of Bihar Bihar

... .. Opposite Party

Appearance :

For the Petitioners : Mr. Ajay Kumar Singh
For the Opposite Party : Mr. Surendra Kumar

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

3 06-09-2024 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 Udwantnagar P.S. Case No. 45 of 2024 dated 07.02.2024 registered for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, two burning bhattis, 2000 litres of sweet *mahua* solution and 56 litres illicit country made liquor were recovered from the bank of river near railway line.

4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been



implicated in this case. The other co-accused persons have already been granted bail by this court *vide* order dated 09.04.2024 passed in Cr. Misc. No. 24500/2024. The petitioners have no criminal antecedent as stated in para 3 of the bail petition. The name of the petitioners was disclosed by local Chowkidar. The petitioners have no concern with the alleged recovery rather the recovery has been made 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. 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 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 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, Bhojpur, Ara in connection with Udwanthnagar P.S. Case No. 45 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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