

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39530 of 2024

Arising Out of PS. Case No.-652 Year-2023 Thana- WARISLIGANJ District- Nawada

1. Nitish Kumar SON OF BIRU YADAV @ UPENDRA YADAV Resident Of Village- Dariyapur (Shekhpurva) P.S.- Warisaliganj, District Nawada
2. NITISH KUMAR @ NITISH YADAV S/O DHIRENDRA YADAV R/O VILLAGE- DARIYAPUR (SHEKHPURVA), P.S.- WARISALIGANJ, DIST- NAWADA

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sheo Kumar Prasad
For the Opposite Party/s : Mr.Braj Kishore Pd.(App)

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 23-08-2024 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 Warsaliganj P.S. Case No. 652 of 2023 dated 29.12.2023 for the offence/s punishable u/ss 30(a), 30 (c) and 41 of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 22 litres of illicit country made liquor, 1800 litres of fermented jawa mahua and other apparatus used for making liquor were recovered near the water canal.

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



implicated in this case. No incriminating material has been recovered from the conscious possession of the petitioners. The recovery was made from an open place that is accessible to anyone. Local Chowkidar disclosed the name of the petitioners due to previous enmity. The petitioners have no concern with the alleged recovery. The petitioners have no criminal antecedent as stated in para 3 of the bail petition. Learned counsel has submitted that 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 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. Similarly situated co-accused has already been granted anticipatory bail by this court vide order dated 18.04.2024 passed in Cr. Misc No. 27792 of 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/- (Rupees twenty thousand) each with two sureties of the like amount each to the satisfaction of the learned court concerned, Nawada in connection with Warsaliganj P.S. Case No. 652 of 2023, subject to conditions 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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