

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35632 of 2024

Arising Out of PS. Case No.-37 Year-2024 Thana- KUNDWACHAINPUR District- East
Champaran

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1. ARJUN YADAV S/O MUNNA RAI @ MUNNA RAY R/O VILLAGE- BASANTPUR, P.S- KUNDWACHAINPUR, DISTT.- EAST CHAMPARAN.
 2. RAJESH SAH S/O BRIJ KISHORE SAH R/O VILLAGE- BASANTPUR, P.S- KUNDWACHAINPUR, DISTT.- EAST CHAMPARAN.

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Abhishek Kumar, Adv.
For the Opposite Party/s : Mr. Umanath Mishra, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

3 26-07-2024 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 Kundwachainpur P.S. Case No. 37 of 2024 dated 28.03.2024 registered for the offences punishable u/ss 414 read with Section 34 of the Indian Penal Code and u/ss 30(a), 32 and 41(i) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 306 litres of illicit Nepali liquor was recovered from the Tata Magic vehicle which was being driven by the co-accused person.

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



implicated in this case. The petitioners have no criminal antecedent as stated at para 3 of the bail petition. The name of the petitioners has sprung up in the confessional statement of the co-accused, Rakesh Kumar. The petitioners are neither the owner nor the driver of the said vehicle and the same was not being driven by the petitioners at the time of the alleged recovery. Nothing has been recovered from the conscious possession of the petitioners, hence no case is made out. The co-accused person has already been granted regular bail by this court vide order dated 09.05.2024 passed in Cr. Misc. No. 35770 of 2024. 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 at Motihari in connection with Kundwachainpur P.S. Case No. 37 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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