

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40348 of 2024

Arising Out of PS. Case No.-438 Year-2023 Thana- PHULWARIYA District- Gopalganj

1. Rakesh Kumar @ Mangaru Yadav Son of Rambelash Yadav R/O Mardwani, P.S.- Phulwariya, Dist.- Gopalganj
2. Pappu Yadav Son of Sarju Yadav R/O Mardwani, P.S.- Phulwariya, Dist.- Gopalganj
3. Gawtam Yadav Son of Sambhu Yadav R/O Mardwani, P.S.- Phulwariya, Dist.- Gopalganj

... .. Petitioner/s

Versus

The State Of Bihar Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Deepankar Raj, Adv.

For the Opposite Party/s : Mr. Lakshmi Kant Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 30-08-2024 Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

2. The petitioner is apprehending their arrest in connection with Phulwariya P.S. Case No. 438 of 2023 dated 27.11.2023 for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 81 litres of illicit country made liquor was recovered from the motorcycle and from the gunny bag near the pool.

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



implicated in this case. The petitioners are not the owner of the said vehicle. It is further submitted that the petitioners have no concern with the alleged recovery. Nothing has been recovered from the conscious possession of 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. The similarly situated co-accused person has already been granted anticipatory bail by this Court vide order dated 26.07.2024 passed in Cr. Misc. No. 31681 of 2024. The petitioner no.1 has two criminal antecedents, the petitioner no.2 has one criminal antecedent and the petitioner no.3 has no criminal antecedent as stated in para 3 of the bail petition.

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 eight 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, Gopalganj in connection with Phulwariya P.S. Case No. 438 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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