

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41057 of 2024

Arising Out of PS. Case No.-205 Year-2024 Thana- MADHAURAH District- Saran

1. Bhola Nut S/O Sant Lal Nat R/O Village Sisai, P.S. Mashrakh, Distt-Saran
2. Ajay Nut S/O Sant Lal Nat R/O Village Sisai, P.S. Mashrakh, Distt-Saran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Alok Kumar Alok, Adv.
For the Opposite Party/s : Mr. Rajesh Kumar, 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 Petitioners are apprehending their arrest in connection with Marhowrah P.S. Case No. 205 of 2024 dated 02.04.2024 registered for the offences punishable u/ss 30(a), 32(1), 32(2), 38, 41(1) and 41(2) of the Bihar Prohibition and Excise Act 2018.

3. As per the prosecution case, total 3718 litres of illicit spirit was recovered from the Bathan of the co-accused, Sonu Baitha.

4. Learned counsel for the petitioners have submitted that the petitioners are innocent and have falsely been implicated in this case. The petitioners are not named in the FIR.



The name of the petitioners was disclosed by local Chowkidar. The petitioners are not the owner of the said vehicle. No incriminating article has been recovered from the conscious possession of the petitioners, hence no case is made out. The petitioners have three criminal antecedents in which he is on bail in all the cases as stated in para 3 of the bail petition. The co-accused has been granted regular bail by this Court vide order dated 13.05.2024 passed in Cr. Misc. No. 36398 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 anticipatory bail on furnishing bail-bond of Rs. 20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of the learned court concerned, Saran at Chapra in connection with Marhowrah P.S. Case No. 205 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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