

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56664 of 2024

Arising Out of PS. Case No.-155 Year-2024 Thana- KATEYA District- Gopalganj

1.

Kamal Kumar S/O Yogendra Sah R/O Village- Patiyama Chowk, P.S- Ahiyapur, Dist- Muzzafarpur, Bihar
2.

Jaybahadur Sah S/O Kodayi Sah R/O Mahuyi Chamukha Ward No. 4, Ward No. 4, P.S- Bochaha, Dist.- Muzzafarpur, Bihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sumit Shekhar Pandey, Adv
For the Opposite Party/s : Mr. Manoj Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 04-10-2024 Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

2. The Petitioners are apprehending their arrest in connection with Kateya P.S. Case No. 155 of 2024 dated 28.04.2024 of the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act 2018.

3. As per the prosecution case, total 2044.260 litres of illicit country liquor was recovered from the *pick-up van and the tempo*

4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. The petitioners have clean criminal



antecedent as stated at para 3 of the bail petition. The name of the petitioners transpired in this case only on the basis of the confessional statement of apprehended persons. The petitioner no. 1 is the owner of the said seized tempo. Similar situated co-accused has already been granted regular bail by this Court vide order dated 09.07.2024 passed in Cr. Misc. No. 48408 of 2024. The petitioners have no concern with the alleged recovery. No incriminating article 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 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, Gopalganj in connection with Kateya P.S. Case No. 155 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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