

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.82017 of 2023

Arising Out of PS. Case No.-495 Year-2023 Thana- BHORE District- Gopalganj

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1. Raja Ansari S/O Muslim Mansuri @ Muslim Miya @ Muslim Ansari R/O Village- Luhsi, Ps. Bhore, Dist. Gopalganj.
 2. Mithun Yadav @ Abhay Yadav @ Abhay Kumar S/O Amarjit Yadav R/O Village- Luhsi, Ps. Bhore, Dist. Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Suresh Prasad Bhakta, Advocate.

For the Opposite Party/s : Mr. Shyameshwar Dayal, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 12-01-2024 Learned counsel for the petitioners is permitted to remove the defect(s), as pointed out by the office, if any, within a period of three weeks from today.

2. Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

3. The petitioners are apprehending their arrest in connection with Bhore P.S Case No. 495 of 2023 dated 01.10.2023 for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 90 litres of illicit liquor kept in two plastic bags was recovered from the motorcycle.



5. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. It is further submitted that the petitioners are neither the owner nor the driver of the said vehicle. Learned counsel has further submitted that the co-accused disclosed the name of the petitioners. The petitioner no.1 has not criminal antecedent whereas the petitioner no.2 has eight criminal antecedents as stated at para 3 of the bail petition. No incriminating article has been recovered from the 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.

6. 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.



7. 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 Bhore P.S Case No. 495 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure, with further condition:

(i). The petitioner no.2 namely, Mithun Yadav @ Abhay Yadav is directed to remain physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, the bail bond of the petitioner is liable to be cancelled.

(Chandra Prakash Singh, J)

Nilmani/-

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