

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.83193 of 2023

Arising Out of PS. Case No.-989 Year-2023 Thana- TURKAULIYA District- East
Champaran

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1. Raj Kumar Mukhiya S/O Shivrath Mukhiya @ Bindeshwar Mukhiya @
Vindeshwari Mukhiya R/V- Chichurahiya, P.S- Banjariya, Distt.- East
Champaran.
 2. Lalbabu Mukhiya S/O Panchu Mukhiya R/V- Chichurahiya, P.S- Banjariya,
Distt.- East Champaran.
 3. Nawal Mukhiya S/O Mahesh Mukhiya R/V- Chichurahiya, P.S- Banjariya,
Distt.- East Champaran.
 4. Nitish Sahani S/O Rameshwar Sahni R/V- Chichurahiya, P.S- Banjariya,
Distt.- East Champaran.
 5. Nitish Baitha S/O Suresh Baitha R/V- Chichurahiya, P.S- Banjariya, Distt.-
East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Kundan Rathore@ Kundan Kumar
For the Opposite Party/s : Mr.Md. Mushtaque Alam

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

2 19-01-2024 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 Turkauliya (Banjariya) P.S. Case No. 989 of
2023 dated 20.09.2023 registered for the offence punishable u/s



30(a) and 41(1) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 65 litres of country-made illicit liquor has been recovered from the bank of tilawe river. The local people disclosed the name of the petitioners.

5. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. The petitioner No. 1 and 3 have no criminal antecedent whereas the petitioner No. 2 and 4 are accused in one more criminal case and the petitioner No. 5 is accused in three other criminal cases as stated in para 3 of the bail petition. 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.

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) each with two sureties of the like amount each to the satisfaction of learned Court concerned, East Champaran, Motihari in connection with Turkauliya (Banjariya) P.S. Case No. 989 of 2023, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

8. This application stands allowed.

(Chandra Prakash Singh, J)

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